No. 14-770

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IN THE
Supreme Court of the United States

BANK MARKAZI,
THE CENTRAL BANK OF IRAN,
Petitioner,

v.

DEBORAH D. PETERSON, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case concerns nearly $2 billion of bonds in which Bank Markazi, the Central Bank of Iran, held an interest in Europe as part of its foreign currency reserves. Plaintiffs, who hold default judgments against Iran, tried to seize the assets. While the case was pending, Congress enacted § 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. § 8772. By its terms, that statute applies only to this one case: to "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG)." *Id.* § 8772(b). "In order to ensure that Iran is held accountable for paying the judgments," it provides that, notwithstanding any other state or federal law, the assets "shall be subject to execution" upon only two findings—essentially, that Bank Markazi has a beneficial interest in them and that no one else does. *Id.* § 8772(a)(1), (2). The question presented is:

Whether § 8772—a statute that effectively directs a particular result in a single pending case—violates the separation of powers.

PARTIES TO THE PROCEEDINGS BELOW

Due to its length, the list of parties to the proceedings below is set forth in full in the appendix (App., *infra*, 130a-144a).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bank Markazi, the Central Bank of Iran, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-12a) is reported at 758 F.3d 185 (2d Cir. 2014). The opinions and orders of the district court (App., *infra*, 13a-127a) are unreported.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on July 9, 2014. It denied rehearing and rehearing en banc on September 29, 2014. App., *infra*, 128a. This Court has jurisdiction under 28 U.S.C. § 1254(1). Although 28 U.S.C. § 2403(a) may apply, the court of appeals did not invoke that provision. The United States is being served with this petition.

CONSTITUTIONAL, STATUTORY, AND TREATY PROVISIONS INVOLVED

Relevant provisions of Article III of the U.S. Constitution, the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. §8772; the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§1602 *et seq.*; the Terrorism Risk Insurance Act of 2002, 28 U.S.C. §1610 note; the Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899; and Article 8 of the Uniform Commercial Code are set forth in the appendix. App., *infra*, 145a-186a.

PRELIMINARY STATEMENT

This case concerns nearly $2 billion of bonds in which Bank Markazi, the Central Bank of Iran, held an interest in Europe as part of its foreign currency reserves. Plaintiffs, who hold default judgments against Iran, tried to seize the assets. Under ordinary legal principles, the assets would not have been attachable.

Plaintiffs, however, persuaded Congress to enact a statute to dictate a contrary result in this one case. By its terms, the statute applies only to "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG)." 22 U.S.C. §8772(b). "In order to ensure that Iran is held accountable for paying the judgments," the statute provides, the assets "shall be subject to execution" upon only two findings—essentially, that Bank Markazi has a beneficial interest in them and that no one else does. *Id.* §8772(a)(1), (2).

Relying on that statute, the district court ordered the assets turned over to plaintiffs. The Second Circuit affirmed. Conceding that there may be "little functional difference" between §8772 and a statute that simply directed the court to rule in plaintiffs' favor, the court upheld §8772 as a valid exercise of Congress's authority. App., *infra*, 10a. The question presented is whether such a statute—which effectively directs a particular result in a single pending case—violates the separation of powers.

STATEMENT

I. STATUTORY FRAMEWORK

A. The Foreign Sovereign Immunities Act

For most of this Nation's history, foreign sovereigns were completely immune from suit. See *Verlinden B.V v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983). In 1952, however, the State Department adopted the "restrictive" theory of immunity that recognized limited exceptions. *Id.* at 486-487. Two decades later, Congress codified the exceptions in the Foreign Sovereign Immunities Act of 1976 ("FSIA"), Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended at 28 U.S.C. §§1602 *et seq.*).

The FSIA preserves the general rule that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States." 28 U.S.C. §1604. A "foreign state" includes any "agency or instrumentality of a foreign state." *Id.* §1603(a). Section 1605 then lists narrow exceptions to that immunity. *Id.* §1605.

The FSIA separately addresses the immunity of sovereign property from attachment or execution. Generally, "property in the United States of a foreign state shall be immune from attachment arrest and execution." 28 U.S.C. §1609. Section 1610 lists narrow exceptions, but only for certain categories of "property in the United States." *Id.* § 1610(a)-(b).

Section 1611(b) provides an additional, special immunity for central bank assets. Under that section, "[n]otwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if * * * the property is that of a foreign central bank or monetary authority held for its own account." 28 U.S.C. § 1611(b)(1).

B. The Terrorism Amendments to the FSIA

In 1996, Congress created an exception to immunity for terrorism-related claims. See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 221, 110 Stat. 1214, 1241. That exception allows suits for "torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act." 28 U.S.C. § 1605A(a)(1). It applies only if the Executive Branch has designated the sovereign a "state sponsor of terrorism" prior to, or as a result of, the act at issue. *Id.* § 1605A(a)(2)(A)(i)(I).

In the years since, scores of suits have been filed. Typically, the sovereign does not appear, and plaintiffs are awarded default judgments for tens or hundreds of millions of dollars. See Jennifer K. Elsea, Congressional Research Service, *Suits Against Terrorist States by Victims of Terrorism* 67-74 (Aug. 8, 2008). Plaintiffs, however, have faced difficulty collecting. See *id.* at 5-68. Congress has responded by repeatedly amending the exceptions to immunity from execution. See *ibid.*

The 1996 amendments added two exceptions. Under the first, a foreign state's property "used for a commercial activity in the United States" is not immune from execution of a terrorism-related judgment. 28 U.S.C.

§ 1610(a)(7). A similar exception applies to certain property of agencies or instrumentalities. *Id.* § 1610(b)(3).

In 2002, Congress enacted § 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322, 2337, to permit execution against assets the President had "blocked" (*i.e.*, frozen) under certain economic-sanctions statutes. It provides:

> Notwithstanding any other provision of law, * * * in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A * * * , the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution * * * .

28 U.S.C. § 1610 note § 201(a). By its terms, TRIA applies only to "blocked *assets of* that terrorist party"—*i.e.*, property owned by that party. See *Heiser* v. *Islamic Republic of Iran*, 735 F.3d 934, 937-941 (D.C. Cir. 2013).

In 2008, Congress amended the FSIA yet again. See National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338. It expanded the remedies available under the terrorism exception. 28 U.S.C. § 1605A. It also expanded the assets available for execution. *Id.* § 1610(g).

C. Article 8 of the Uniform Commercial Code

The FSIA generally addresses only immunity, not substantive law. See *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 620 (1983). The relevant substantive law here is Article 8 of the Uniform Commercial Code and its foreign equivalents.

In modern financial markets, securities owners rarely possess physical certificates. Instead, they own a "security entitlement" against an intermediary such as a bank or broker. See U.C.C. art. 8 prefatory note (1994); 7A W. Hawkland, *et al.*, *Uniform Commercial Code Series* §8-101 (2013). U.C.C. Article 8 defines the property rights in those entitlements.

The holder of a security entitlement has the right to receive interest, cast votes, and exercise other incidents of ownership. U.C.C. §§8-505 to 8-508. Rather than interacting with the issuer directly, however, the owner holds those rights against its securities intermediary. *Ibid.* The intermediary, in turn, must either own the underlying financial asset or own a security entitlement in that asset through yet another intermediary, so that it can provide the benefits of ownership to its customer. *Id.* §8-504(a). In that manner, Article 8 enables widespread holding and transfer of securities without physical transfers of the underlying securities.

Because Article 8 is built on potentially lengthy chains of ownership from intermediary to intermediary, it carefully defines attachable property rights. Section 8-112(c) provides that "[t]he interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary *with whom the debtor's securities account is maintained.*" U.C.C. §8-112(c) (emphasis added). In other words, if a debtor holds a security entitlement in a bond with Bank A, which in turn holds an entitlement with Bank B, the debtor's only property is the entitlement he holds with Bank A. Creditors may be able to seize the debtor's holdings at Bank A, but they cannot go beyond that and attach Bank A's holdings at Bank B to satisfy the debtor's debts. The official comment explains:

> Process is effective only if directed to the debtor's *own* security intermediary. If Debtor holds securities through Broker, and Broker in turn holds through Clearing Corporation, *Debtor's property interest is a security entitlement against Broker*. Accordingly, Debtor's creditor cannot reach Debtor's interest by legal process directed to the Clearing Corporation.

U.C.C. §8-112 cmt. 3 (emphasis added); see also 7A Hawkland, *supra*, §8-112:01 ("Since [the debtor's] property interest is 'located' at [its intermediary], * * * the only proper subject of legal process by [the debtor's] creditors would be [that intermediary]. [The intermediary's intermediary] does not have possession of some item of property in which [the debtor] has a direct property interest * * * ").

II. PROCEEDINGS BELOW

A. Proceedings Before the District Court

1. *The Restraints and Blocking Order*

Petitioner Bank Markazi is the Central Bank of Iran. Like other central banks, it holds foreign currency reserves to carry out monetary policies such as maintaining price stability. C.A. App. 1330. Like other central banks, it often maintains the reserves in bonds issued by foreign sovereigns or "supranationals" like the European Investment Bank. *Id.* at 1331, 1146-1149.

As part of its foreign currency reserves, Bank Markazi held $1.75 billion in security entitlements in foreign government and supranational bonds at Banca UBAE S.p.A., an Italian bank. App., *infra*, 2a; C.A. App. 1329-1332, 1779. UBAE, in turn, held corresponding security entitlements in an account with another intermediary, Clearstream Banking, S.A., in Luxembourg. App., *infra*, 2a, 57a-59a. Clearstream then held corresponding security entitlements in an omnibus account at Citibank, N.A., in New York. *Id.* at 2a.[1]

Plaintiffs hold billions of dollars of default judgments against the Islamic Republic of Iran arising out of terrorist attacks by organizations that allegedly received support from Iran. App., *infra*, 2a, 52a-53a n.1, 116a. Bank Markazi is not a party to any of those judgments and is not alleged to have been involved in the attacks. See *id.* at 52a-53a n.1.

Upon learning of Bank Markazi's assets, plaintiffs did not try to attach them in Italy or Luxembourg. Instead, in June 2008, they served restraining notices on Clearstream and Citibank in New York. App., *infra*, 3a, 62a. Clearstream moved to vacate the restraints. On June 23, 2009, the district court "agree[d] with Clearstream that the assets * * * are governed by NY UCC 8-112(c)" and that, "[u]nder the plain meaning of NY UCC 8-112(c), Clearstream is not a proper garnishee" because "Clearstream does not currently carry on its books * * * an account in the name of the Islamic Republic of Iran." *Id.* at 126a. Nonetheless, the court left the restraints in place so plaintiffs could pursue their theory that the transfer to UBAE was a fraudulent conveyance. *Ibid.*; see n.1, *supra*.

In June 2010, plaintiffs commenced this action against Bank Markazi, UBAE, Clearstream, and Citibank for turnover of the restrained assets under TRIA. App., *in-*

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[1] Until February 2008, Bank Markazi held the security entitlements directly with Clearstream in Luxembourg; the parties dispute whether the transfer to UBAE was a fraudulent conveyance. App., *infra*, 57a-59a & n.2; C.A. App. 1331-1332. During the proceedings below, moreover, the bonds matured so that Citibank then held the cash proceeds. App., *infra*, 61a. At the time of judgment, the assets were worth $1.895 billion. *Id.* at 23a.

fra, 3a, 62a-63a. Later, in February 2012, the President issued an order blocking all "property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States," citing purported "deceptive practices" and "deficiencies in Iran's anti-money laundering regime." Executive Order No. 13,599, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012). Citibank then reported the restrained assets as blocked by that order. App., *infra*, 64a.

Bank Markazi moved to dismiss, and plaintiffs moved for summary judgment. App., *infra*, 3a, 55a. Bank Markazi urged that the security entitlements Citibank held for Clearstream were not Bank Markazi's property under U.C.C. Article 8 and thus were not "assets of" Bank Markazi under TRIA. *Id.* at 96a-97a. Even if they were, it argued, the assets were entitled to central bank immunity under FSIA § 1611(b). *Id.* at 102a. Bank Markazi also invoked the Treaty of Amity between the United States and Iran, which prohibits discrimination against Iranian companies. *Id.* at 101a (citing Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899).

2. *Congress's Enactment of § 8772*

Plaintiffs' lawyers then lobbied Congress to change the law governing the case. Press coverage reported that "lawyers and lobbyists for victims of terrorist attacks were quietly jockeying" over the legislation, and that Senator Bob Menendez was "'working with all of the plaintiff groups to ensure that the approximately $2.5 billion in Iranian blocked assets located in New York are available.'" Kate Ackley, *Rival Groups of Terror Victims Square Off*, Roll Call, May 22, 2012. The House sponsor explained that the bill sought "to change a specific part of Federal law to allow assets seized from the

Iranian Government to be allocated to [plaintiffs] to recover the judgments owed to them." 158 Cong. Rec. H5569 (Aug. 1, 2012).

The result was §502 of the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1214, 1258 (codified at 22 U.S.C. §8772). Section 8772 specifically targets the assets in this case. It applies only to "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG)." 22 U.S.C. §8772(b). It adds: "Nothing in this section shall be construed * * * to affect the availability, or lack thereof, of a right to satisfy a judgment * * * in any proceedings other than [those] proceedings * * * " *Id.* §8772(c)(1).

As to those assets, §8772 fundamentally changes the governing law. It provides:

> [N]otwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law, a financial asset that is—
>
> > (A) held in the United States for a foreign securities intermediary doing business in the United States;
> >
> > (B) a blocked asset (whether or not subsequently unblocked) * * * ; and
> >
> > (C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran * * * , that such foreign securities intermediary or a related intermediary holds abroad,

> shall be subject to execution or attachment in aid of execution in order to satisfy any judgment * * *

22 U.S.C. §8772(a)(1).

The statute prescribes two "determination[s]" the court must make. 22 U.S.C. §8772(a)(2). "In order to ensure that Iran is held accountable for paying the judgments," the court must determine (1) "whether Iran holds equitable title to, or the beneficial interest in, the assets," and (2) "that no other person possesses a constitutionally protected interest in the assets." *Ibid.*

3. *The District Court's Decision*

On February 28, 2013, the district court denied Bank Markazi's motion to dismiss and granted summary judgment to plaintiffs. App., *infra*, 52a-124a.

The court held that §8772 rendered U.C.C. Article 8 irrelevant: Section 8772 "specifically trumps 'any other provision of law' and specifically permits execution on the assets specifically at issue in this litigation." App., *infra*, 97a. Nonetheless, the court deemed the assets attachable regardless, relying partly on purported statements of ownership by Bank Markazi and partly on its view that Bank Markazi's U.C.C. argument was "sophistry." *Id.* at 97a-98a & n.10, 101a.

With respect to the Treaty of Amity, the court again ruled that §8772 rendered the issue moot. App., *infra*, 102a. But it also found the Treaty inapplicable because, in its view, the Treaty could not be used to "circumvent congressional acts or authorized legal actions." *Ibid.*

As for central bank immunity, the court ruled that §8772 "expressly preempt[s] any immunity." App., *infra*, 103a. But it also held that TRIA trumps central bank immunity and that the blocking order's reference to "deceptive practices" "suggests that the activities of Bank Markazi are not central banking activities." *Ibid.*

The court next turned to §8772's required findings. "On this record and as a matter of law," it held, "no other entity could have an equitable or beneficial interest" in the assets. App., *infra*, 111a. "Clearstream does not allege * * * that it has legal title or the right to acquire that title for the Blocked Assets." *Id.* at 112a. "UBAE disclaims any 'legally cognizable interest' in the Citibank proceeds." *Ibid.* And Citibank simply "maintain[s] [an] account on behalf of another." *Ibid.* In short, "[t]here simply is no other possible owner of the interests here other than Bank Markazi." *Id.* at 113a.

Bank Markazi argued that §8772 violated the separation of powers by effectively dictating the outcome of a single case. App., *infra*, 114a. But the court disagreed. "The statute does not itself 'find' turnover required," the court asserted; "such determination is specifically left to the Court." *Id.* at 114a-115a. The statutory findings, it opined, were not "mere fig leaves" but left "plenty for this Court to adjudicate." *Id.* at 115a.

On May 20, 2013, the district court denied reconsideration. App., *infra*, 31a-51a. On July 9, 2013, it entered a Rule 54(b) judgment directing turnover of the assets (while retaining jurisdiction over a different dispute involving other assets). *Id.* at 13a-30a. The judgment released Citibank and Clearstream from liability to Bank Markazi and enjoined Bank Markazi from asserting claims against them. *Id.* at 24a-26a.

B. The Court of Appeals' Opinion

The court of appeals affirmed. App., *infra*, 1a-12a.

The court acknowledged Bank Markazi's arguments that the assets at issue were not "assets of" Bank

Markazi under TRIA and that, even if they were, they were protected by central bank immunity. App., *infra*, 5a. But the court declined to reach those issues. "Congress," it explained, "has changed the law governing this case by enacting 22 U.S.C. § 8772." *Ibid.*

The court then turned to Bank Markazi's separation-of-powers challenge. It recognized that *United States* v. *Klein*, 80 U.S. 128 (1872), had struck down a statute that directed courts to treat pardons of Confederate sympathizers as conclusive evidence of disloyalty. App., *infra*, 8a. Congress, *Klein* declared, may not "prescrib[e] a rule of decision to the courts." *Ibid.* But the court of appeals also noted that this Court had distinguished *Klein* in *Robertson* v. *Seattle Audubon Society*, 503 U.S. 429 (1992). App., *infra*, 8a-9a. *Robertson* upheld a statute passed to resolve two environmental suits by deeming management of forests according to the statute's terms to satisfy applicable requirements. *Ibid.*

The court of appeals found § 8772 similar to the statute in *Robertson*. "[Section] 8772 does not compel judicial findings under old law," it held, but rather "changes the law applicable to this case." App., *infra*, 9a. And like the statute in *Robertson*, it "explicitly leaves the determination of certain facts to the courts." *Ibid.*

Bank Markazi argued that § 8772 "effectively compels only one possible outcome, as Iran's beneficial interest in the assets had been established by the time Congress enacted § 8772." App., *infra*, 10a. The court did not deny that § 8772 had that effect. But it believed the argument foreclosed by *Robertson*, "as the statute there was specifically enacted to resolve two pending cases" as well. *Ibid.* "Indeed," the court added, "it would be unusual for there to be more than one likely outcome when Congress changes the law for a pending case with a developed factual record." *Ibid.*

The court thus conceded that "there may be little functional difference between § 8772 and a hypothetical statute directing the courts to find that the assets at issue in this case are subject to attachment under existing law." App., *infra*, 10a. But it held that, under *Robertson*, "§ 8772 does not cross the constitutional line." *Ibid.*

The court also rejected Bank Markazi's reliance on the Treaty of Amity. "[E]ven if there were a conflict" between the Treaty and § 8772, it ruled, "the later-enacted § 8772 would still apply * * * ." App., *infra*, 5a. The court also denied the existence of any conflict. Although the Treaty requires treatment of Iranian companies to be "'fair and equitable' and no 'less favorable than that accorded nationals and companies of any third country,'" the court asserted that § 8772 "contains no country-based discrimination" and in fact is "expressly *non*-discriminatory" because it applies only to this case. *Id.* at 7a.

The court of appeals denied rehearing and rehearing en banc on September 29, 2014. App., *infra*, 128a. On October 29, 2014, the court granted Bank Markazi's motion to stay the mandate. *Id.* at 129a.

REASONS FOR GRANTING THE PETITION

By enacting § 8772, Congress legislated the outcome of a single case to ensure that nearly $2 billion of disputed assets would be turned over to plaintiffs. In doing so, it repudiated binding treaty obligations, ignored longstanding international law, and overturned substantive state property law. The Second Circuit upheld the statute as consistent with the separation of powers, even though it applies solely to this one case and effectively dictated its outcome. No court has ever upheld such a blatant intrusion on judicial power.

If *United States* v. *Klein*, 80 U.S. 128 (1872), still has any force, Congress cannot enact such legislation. Congress passed a targeted statute to change the outcome of one case. Although it purported to require two findings, they were makeweights; the Second Circuit never suggested otherwise. And this case squarely presents the issue left open in *Robertson* v. *Seattle Audubon Society*, 503 U.S. 429 (1992): whether a statute is unconstitutional if it "swe[eps] no more broadly * * * than the range of applications at issue in [one] pending case[ ]." *Id.* at 441.

Section 8772 is merely the latest of several instances of Congress's disregard for separation-of-powers principles to favor sympathetic plaintiffs. The statute not only violates United States treaty obligations and imperils the United States' reputation as a safe custodian for central bank reserves. It also threatens the judiciary's ability to operate as an independent branch rather than a mere adjunct resolving property disputes as the legislature may direct. This Court should grant review.

I. THIS CASE PRESENTS IMPORTANT SEPARATION-OF-POWERS QUESTIONS LEFT OPEN IN *ROBERTSON*

Klein made clear that Article III prohibits Congress from exercising judicial power by legislating the outcome of a particular case. This Court, however, has not clearly defined the scope of that prohibition. This case tests *Klein*'s limits.

A. *Klein* Prohibits Congress from Dictating the Outcome of a Particular Case

1. In *Klein*, this Court addressed a post-Civil War statute designed to prevent pardoned Confederate sympathizers from prevailing in suits against the govern-

ment. An 1863 statute had authorized the Secretary of the Treasury to seize and sell abandoned or captured property during the war. Ch. 120, §1, 12 Stat. 820, 820 (1863). The owner could sue in the court of claims after the war to recover the proceeds, but had to prove his loyalty to the United States. *Id.* §3.

In *United States* v. *Padelford*, 76 U.S. 531 (1870), this Court held that acts of disloyalty would be disregarded if the claimant had been pardoned. *Id.* at 541-543. A few months later, Congress included a rider in an appropriations bill stating that a pardon was not "admissible in evidence on the part of any claimant"; to the contrary, if the pardon recited acts of disloyalty that the recipient had not denied upon being pardoned, the statute required that it be deemed "conclusive evidence that such person did take part in and give aid and comfort to the late rebellion." Ch. 251, 16 Stat. 230, 235 (1870).

This Court held the statute unconstitutional. Congress, it concluded, had "passed the limit which separates the legislative from the judicial power." *Klein*, 80 U.S. at 147. The statute purported to dictate the outcome of pending cases "founded solely on the application of a rule of decision * * * prescribed by Congress." *Id.* at 146. That was impermissible: Congress may not "prescribe rules of decision to the Judicial Department of the government in cases pending before it." *Ibid.*

Klein distinguished the Court's earlier decision in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1856). In *Wheeling Bridge*, the Court had found a bridge to be an obstruction to navigation and ordered its removal. *Id.* at 429. Congress responded by passing a statute declaring the bridge to be a federal post-road. *Ibid.* That statute, *Klein* explained, left the Court "to apply its ordinary rules to the new circumstances created by the act." 80 U.S. at 146-147. In *Klein*, by contrast, Congress had "prescribe[d] a rule in conformity with which the court must [decide the case]." *Id.* at 147.

2. This Court revisited *Klein*'s scope in *Robertson* v. *Seattle Audubon Society*, 503 U.S. 429 (1992). *Robertson* arose out of two suits alleging that the government's plans to allow certain timber harvesting violated federal environmental statutes. *Id.* at 432. While the suits were pending, Congress enacted legislation that "established a comprehensive set of rules to govern harvesting within a geographically and temporally limited domain." *Id.* at 433-434 & n.1 (citing Pub. L. No. 101-121, § 318(b)(3), (5), 103 Stat. 701, 746-747 (1989)). The statute provided that "management of areas according to [the new rules] * * * is adequate consideration for the purpose of meeting the statutory requirements that are the basis for [the suits]." Pub. L. No. 101-121, § 318(b)(6)(A), 103 Stat. at 747.

The Court rejected the claim that the statute violated *Klein*. The statute, it explained, "compelled changes in law, not findings or results under old law." 503 U.S. at 438. The Court "f[ound] nothing in [the statute] that purported to direct any particular findings of fact or applications of law." *Ibid.* Rather, the statute "expressly reserved judgment upon 'the legal and factual adequacy' of the administrative documents authorizing [certain] sales" and "expressly provided for *judicial* determination of the lawfulness of [other] sales." *Id.* at 438-439.

An *amicus* argued that "even a change in law, prospectively applied, would be unconstitutional if the change swept no more broadly, or little more broadly, than the range of applications at issue in the pending cases." 503 U.S. at 441. But "[t]his alternative theory was neither raised below nor squarely considered by the

Court of Appeals, nor was it advanced by respondents in this Court," so the Court "decline[d] to address it." *Ibid.*

B. *Klein*'s Scope Remains Uncertain

Confusion over *Klein*'s scope is pervasive. The D.C. Circuit has described *Klein* as "a bit of a constitutional Sphinx." *Janko* v. *Gates*, 741 F.3d 136, 146 (D.C. Cir. 2014), petition for cert. filed, No. 14-650 (Nov. 26, 2014). The Tenth Circuit has observed that "*Klein* is a notoriously difficult decision to interpret." *Biodiversity Assocs.* v. *Cables*, 357 F.3d 1152, 1170 (10th Cir. 2004) (McConnell, J.), cert. denied, 543 U.S. 817 (2004). And the Second Circuit has agreed that "[w]hether a statute provides only the standard to which courts must adhere or compels the result that they must reach can be a vexed question." *Benjamin* v. *Jacobson*, 124 F.3d 162, 174 (2d Cir. 1997), vacated, 172 F.3d 144 (2d Cir. 1999), cert. denied, 528 U.S. 824 (1999).

Courts of appeals have articulated *Klein*'s scope in varying ways. The Seventh Circuit has interpreted the case to mean that, while Congress "may make rules that affect *classes* of cases," it "cannot tell courts how to decide a *particular* case." *Lindh* v. *Murphy*, 96 F.3d 856, 872 (7th Cir. 1996) (en banc) (emphasis added), rev'd on other grounds, 521 U.S. 320 (1997). Thus, while Congress "may prescribe maximum damages for categories of cases," it "cannot say that a court must award Jones $35,000 for being run over by a postal truck." *Ibid.*

The D.C. Circuit, by contrast, has reached the question reserved in *Robertson* and held that it is "unobjectionable" for Congress to target a particular case. *Nat'l Coal. To Save Our Mall* v. *Norton*, 269 F.3d 1092, 1097 (D.C. Cir. 2001), cert. denied, 537 U.S. 813 (2002). While conceding that "*Klein*'s exact meaning is far from clear," the court saw "no reason why the specificity should suddenly become fatal merely because there happened to be a pending lawsuit." *Id.* at 1096-1097.

C. This Case Squarely Presents Important Issues Left Open in *Robertson*

This case presents the important questions about *Klein*'s scope that the Court left open in *Robertson*. And it does so in a context—where Congress sought to compel the transfer of nearly $2 billion from one litigant to another—that calls out for resolution.

Section 8772 applies to one case and one case alone. It governs only "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG)." 22 U.S.C. §8772(b). For good measure, it adds that "[n]othing in this section shall be construed * * * to affect * * * any proceedings other than [those] proceedings." *Id.* §8772(c)(1). The statute thus not only identifies this case by caption and docket number, but expressly disclaims any broader effect.

The Second Circuit nonetheless upheld the statute because it purported to require two judicial "findings" before the assets were awarded to plaintiffs: (1) that "Iran holds equitable title to, or the beneficial interest in, the assets"; and (2) that "no other person possesses a constitutionally protected interest." 22 U.S.C. §8772(a)(2). Neither finding, however, left anything meaningful for the court to decide—indeed, both were forgone conclusions.

The Second Circuit never held otherwise. To the contrary, it conceded that "there may be little functional difference" between §8772 and a statute that simply decided the case. App., *infra*, 10a. Indeed, the court thought it "unusual for there to be more than one likely outcome when Congress changes the law for a pending case with a developed factual record." *Ibid.* The court thus held §8772 constitutional *even if*, as Bank Markazi contended, it left no meaningful role to the courts.

There was good reason for the court not to dispute that premise. The statute effectively directed that plaintiffs prevail—collecting almost $2 billion—so long as Bank Markazi had an interest in the assets and no one else did. That is like directing judgment for a plaintiff on the sole condition that the judgment runs *only* against the defendant. That is practically no condition at all.

Moreover, there was never any serious question that Bank Markazi had a "beneficial interest" in the assets. Plaintiffs first learned of the assets in June 2008 only because the Treasury Department's Office of Foreign Assets Control advised them that an Iranian government entity had an interest in the assets. See Julie Triedman, *Can U.S. Lawyers Make Iran Pay for 1983 Bombing?*, Am. Law., Oct. 28, 2013; C.A. App. 1386. And by the time Congress enacted §8772, the President had blocked the assets *precisely because* they were "interests in property" of Bank Markazi. 77 Fed. Reg. at 6659.

The finding that no other person had an interest in the assets likewise was not a meaningful reservation of judicial authority. The statute excluded a "custodial interest of a foreign securities intermediary * * * that holds the assets abroad for the benefit of Iran." 22 U.S.C. §8772(a)(2)(A). It thus excluded interests of UBAE or Clearstream—the only other parties with plausible claims. By the time Congress enacted §8772, moreover, Citibank had filed its interpleader complaint disclaiming any interest. See App., *infra*, 54a; C.A. App. 1362. It was thus abundantly clear that no other party had a cognizable interest. And if someone did have a "*constitutionally* protected interest," of course, courts would have to consider the claim even without the statute.[2]

The Second Circuit thought that *Robertson* precluded any inquiry into whether the findings were meaningful. App., *infra*, 10a. But nothing in *Robertson* suggests that Congress can avoid *Klein* merely by requiring "findings" on collateral uncontested issues. *Robertson* upheld the statute there because it "expressly reserved judgment upon 'the legal and factual adequacy' of the administrative documents" and "expressly provided for *judicial* determination of the lawfulness of * * * sales." 503 U.S. at 438-439. There was no suggestion those findings were makeweights.

If Article III prevents Congress from "say[ing] that a court must award Jones $35,000 for being run over by a postal truck," *Lindh*, 96 F.3d at 872, it surely also prevents Congress from awarding the same amount conditioned on findings that the $35,000 is the defendant's and not someone else's. Yet that is effectively what Congress did here—to the tune of almost $2 billion. By upholding that law, the Second Circuit divested *Klein* of all force.

The correctness of that holding is a critical issue for the separation of powers. The federal courts are an independent branch of government, not mere handmaidens to legislative directives. As a result, Congress cannot enact a law that directs the entry of judgment for a plaintiff. Congress cannot avoid that prohibition by directing judgment conditioned only on a finding that the assets do not belong to someone other than the defendant.

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[2] The district court asserted that the statute left "plenty for [it] to adjudicate." App., *infra*, 115a. But that claim is hard to square with the court's actual analysis, which occupied only two paragraphs of its lengthy opinion and largely just recited various admissions about the assets' status. See *id.* at 111a-113a. In any event, the *court of appeals* did not rely on that assertion, much less agree with it. And it is the court of appeals' holding that this Court would review.

Even if the findings §8772 required were meaningful, the statute would still offend the separation of powers by purporting to change the governing law for this one case alone. Section 8772 could not be more targeted. It not only identifies this case by caption and docket number, but expressly declares that it has no effect beyond this one case. 22 U.S.C. §8772(b), (c)(1). Congress's intent to interfere with the adjudication of one particular case is thus explicit. The decision below thus presents the question this Court reserved in *Robertson*—whether a change in law is unconstitutional if it "swe[eps] no more broadly * * * than the range of applications at issue in [a] pending case[ ]." 503 U.S. at 441.

Even where a statute does not conclusively resolve a case, it offends basic norms of legislative and adjudicative process for Congress to change the governing law solely for purposes of one case, and solely to benefit the preferred litigant. If *Klein* forbids Congress from directing judgment for a party, it likewise must prohibit Congress from achieving the same result by dramatically changing the law to favor that party, solely for purposes of that one case. Either way, Congress arrogates to itself the role of resolving specific cases and controversies that the Constitution reserves to the judiciary.

II. THE CONSTITUTIONAL ISSUES ARE IMPORTANT AND RECURRING

A. The Question Presented Raises Fundamental Separation-of-Powers Issues

The importance of protecting the authority and independence of the judicial branch cannot be overstated. The Framers "lived among the ruins of a system of intermingled legislative and judicial powers" in which impartial judicial administration was often marred by "abuses of legislative interference with the courts at the behest of private interests and factions." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 219-221 (1995). The Framers felt the "sense of a sharp necessity to separate the legislative from the judicial power." *Id.* at 221. Article III is thus an "'inseparable element of the constitutional system of checks and balances' that 'both defines the power and protects the independence of the Judicial Branch.'" *Stern* v. *Marshall*, 131 S. Ct. 2594, 2608 (2011).

Article III "safeguards the role of the Judicial Branch in our tripartite system." *CFTC* v. *Schor*, 478 U.S. 833, 850 (1986). It is also essential to individual liberty. "'[T]here is no liberty,'" the Framers knew, "'if the power of judging be not separated from the legislative and executive powers.'" *The Federalist No. 78*, at 561 (Cooke ed., 1977) (Hamilton) (quoting Montesquieu). The separation of powers thus not only "protect[s] each branch of government from incursion by the others," but "protect[s] the individual as well." *Bond* v. *United States*, 131 S. Ct. 2355, 2365 (2011).

Given that critical importance, this Court has not hesitated to review separation-of-powers cases, even absent a clear circuit conflict. See, *e.g.*, *Free Enter. Fund* v. *Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010); *Cheney* v. *U.S. Dist. Court*, 542 U.S. 367 (2004); *Freytag* v. *Comm'r*, 501 U.S. 868 (1991). The issues are no less important here.

B. Congress Has Repeatedly Disregarded Separation-of-Powers Principles in This Context

The question presented is not merely important, but recurring as well. In recent years, Congress has repeatedly intervened in lawsuits to help one particular set of plaintiffs—terrorism victims—prevail against foreign governments.

In 2000, for example, individuals detained during the 1979 Iran hostage crisis tried to sue Iran, notwithstanding the United States' settlement with Iran in the Algiers Accords. See *Roeder* v. *Islamic Republic of Iran*, 333 F.3d 228 (D.C. Cir. 2003), cert. denied, 542 U.S. 915 (2004). While the suit was pending, Congress enacted a new exception to sovereign immunity that applied solely to that case, identified by docket number in the statute. See Pub. L. No. 107-77, §626(c), 115 Stat. 748, 803 (2001) (adding the words "or the act is related to Case Number 1:00CV03110(ESG) in the United States District Court for the District of Columbia" to existing immunity exception), amended by Pub. L. No. 107-117, §208, 115 Stat. 2230, 2299 (2002) (correcting typo in docket number) (currently codified at 28 U.S.C. §1605A(a)(2)(B)).

On appeal, the D.C. Circuit recognized that "it is open to question whether Congress may dictate the outcome of a particular judicial proceeding" and reserved judgment as to "whether the amendments, relating as they did specifically to a pending action, violated separation-of-powers principles by impermissibly directing the result of pending litigation." 333 F.3d at 237 & n.5 (citing *Plaut* and *Robertson*); see also *id.* at 231 (quoting district court's observation that "Congress' intent to interfere with this litigation was clear"). Ultimately, the court did not reach the issue, because it held the claims barred by the Algiers Accords. *Id.* at 237-238.

Congress disregarded the separation of powers again when it expanded the FSIA's terrorism exception in 2008. 28 U.S.C. §1605A. Congress included a provision allowing plaintiffs who had already litigated their case to judgment to refile their claims under the new statute. Pub. L.

No. 110-181, §1083(c)(2), 122 Stat. 3, 342 (2008). The Congressional Research Service observed that the statute "may be vulnerable to invalidation as an improper exercise of judicial powers by Congress." Elsea, *supra*, at 61. And courts have disagreed over its constitutionality. Compare *Kumar* v. *Republic of Sudan*, No. 2:10cv171, 2011 WL 4369122, at *11 (E.D. Va. Sept. 19, 2011) (finding constitutional violation), rev'd on other grounds *sub nom. Clodfelter* v. *Republic of Sudan*, 720 F.3d 199 (4th Cir. 2013), with *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 68-70 (D.D.C. 2009) (upholding statute despite "legitimate question of whether this enactment offends deeply entrenched constitutional principles relating to the separation of powers and the ability of the judiciary to function independently without interference from the political process" (citing *Klein*)).

Now, Congress has done it again. This case is just the latest—and most extreme—example of Congress's willingness to test the constitutional boundary between itself and the judicial branch.

III. THIS CASE HAS IMPORTANT INTERNATIONAL RAMIFICATIONS

A. The Decision Below Puts the United States in Violation of Its Treaty Obligations

The Second Circuit's decision is also important because it puts the United States in breach of its solemn treaty obligations. Article IV.1 of the Treaty of Amity requires the United States to "accord fair and equitable treatment to nationals and companies of [Iran]," and to "refrain from applying *unreasonable or discriminatory measures* that would impair their legally acquired rights and interests." Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, art. IV.1, Aug. 15, 1955, 8 U.S.T. 899, 903 (emphasis added). Section 8772 plainly violates that provision. It is hard to imagine a more "unreasonable or discriminatory" measure than one that allows seizure of an Iranian entity's assets, because the entity is Iranian, and orders them paid over to private plaintiffs notwithstanding any state, federal, or international legal principle that would otherwise bar the seizure.

The Second Circuit saw "no country-based discrimination." App., *infra*, 7a. But it ignored the statute's plain terms. Section 8772 applies *only* to assets "equal in value to a financial asset *of Iran*"; it requires the court to find that "*Iran* holds equitable title to, or the beneficial interest in, the assets"; and its purpose is "to ensure that *Iran* is held accountable for paying the judgments." 22 U.S.C. §8772(a)(1)(C), (2) (emphasis added). While the court emphasized that the statute applies only to this case, App., *infra*, 7a, that makes no difference. Whether a statute singles out *one* Iranian instrumentality for arbitrary treatment or *all* of them, it is still a "discriminatory measure[ ]" that singles out an Iranian instrumentality because it is Iranian. Art. IV.1, 8 U.S.T. at 903.[3]

The Second Circuit also held that §8772 would abrogate any inconsistent Treaty provision. App., *infra*, 5a-6a. But an abrogation is still a breach. "That a * * * provision of an international agreement is superseded as domestic law does not relieve the United States of its international obligation or of the consequences of a violation of that obligation." *Restatement (Third) of the Foreign Relations Law of the United States* §115(1)(b) (1987).

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[3] Bank Markazi, moreover, is not even a party to the underlying judgments. See App., *infra*, 52a-53a n.1. Article III.1 of the Treaty requires the United States to respect the "juridical status" of Iranian entities. 8 U.S.T. at 902; see App., *infra*, 6a-7a. And this Court has made clear that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such." *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 626-627 (1983). By allowing seizure of Bank Markazi's purported assets to satisfy Iran's debts, Congress violated those principles as well.

That breach could expose the United States to claims in the International Court of Justice, which has authority to resolve Treaty disputes. Art. XXI.2, 8 U.S.T. at 913; see, *e.g.*, *Oil Platforms (Iran* v. *U.S.)*, 2003 I.C.J. 161 (Nov. 6). The State Department has warned that, when Iranian property is distributed to private plaintiffs, the United States may confront claims in international tribunals, "where we will have to account for it." *Benefits for U.S. Victims of International Terrorism: Hearing Before the S. Comm. on Foreign Relations*, S. Hr'g No. 108-214, at 8 (July 17, 2003).

The decision below also calls into question the United States' commitment to its treaty obligations generally. The Treaty of Amity is but one of more than a dozen similar treaties the United States has signed. See *Sumitomo Shoji Am., Inc.* v. *Avagliano*, 457 U.S. 176, 185-186 & n.13 (1982); Herman Walker, Jr., *Provisions on Companies in United States Commercial Treaties*, 50 Am. J. Int'l L. 373, 373 n.1 (1956). The Nation's repudiation of its obligations here gives other treaty partners reason to doubt its commitment. In *Sumitomo*, this Court cited the fact that "treaty provisions similar to that invoked by [petitioner] are in effect with many other countries" as a reason the question there was "clearly of widespread importance." 457 U.S. at 182 n.7. The same reasoning applies here.

B. The Decision Below Undermines the President's Authority over Foreign Affairs

Section 8772 also interferes with the President's ability to conduct foreign affairs. As this Court has explained, "the congressional purpose in authorizing blocking orders is 'to put control of foreign assets in the hands of the President.'" *Dames & Moore* v. *Regan*, 453 U.S. 654, 673 (1981). "The frozen assets serve as a 'bargaining chip' to be used by the President when dealing with a hostile country." *Ibid.* The Court has thus been reluctant to "allow individual claimants throughout the country to minimize or wholly eliminate this 'bargaining chip' through attachments." *Ibid.*

For the same reason, the Executive Branch has repeatedly opposed using blocked assets to pay judgments. The President twice invoked statutory authority to waive provisions permitting such payments, finding that they would "impede [his] ability * * * to conduct foreign policy in the interest of national security." 63 Fed. Reg. 59,201 (Oct. 21, 1998); 65 Fed. Reg. 66,483 (Oct. 28, 2000). Using blocked assets to pay plaintiffs, he warned, would "effectively eliminate" an "important source of leverage," "seriously affect our ability to enter into global claims settlements," and threaten liability in international tribunals. 1998 Pub. Papers 1843, 1847 (Oct. 23, 1998); see also 2002 Pub. Papers 1697, 1699 (Sept. 30, 2002) (invoking "prerogatives * * * in the area of foreign affairs").

The need to preserve that authority is especially acute today. The President has questioned the wisdom of "[m]any years of refusing to engage Iran." *National Security Strategy* 26 (May 2010). The United States is thus currently involved in ongoing multilateral negotiations with the country. 79 Fed. Reg. 4522 (Jan. 28, 2014); 79 Fed. Reg. 45,228 (Aug. 4, 2014); 79 Fed. Reg. 73,141 (Dec. 9, 2014). As part of that process, Iran will "gain access, in installments, to $4.2 billion of its restricted revenues now held in overseas accounts." 79 Fed. Reg. at 4522. "Imposing additional sanctions now," the President has warned, "will only risk derailing our efforts * * * " 2014

Daily Comp. Pres. Doc. 14, at 1 (Jan. 12, 2014). The decision below threatens those negotiations. Other statutes such as TRIA may already impair the President's authority to some degree. But § 8772—which directs turnover of nearly $2 billion without regard to customary standards—raises that interference to a whole new level.

C. The Decision Undermines Confidence in U.S. Financial Markets

The Second Circuit's decision also undermines the United States' reputation as a safe custodian for central bank reserves. Congress enacted central bank immunity in § 1611(b) to avoid "significant foreign relations problems" and to encourage the "deposit of foreign funds in the United States." H.R. Rep. No. 94-1487, at 31 (1976). "[F]oreign central banks are not treated as generic 'agencies and instrumentalities' of a foreign state under the FSIA; they are given 'special protections' befitting the particular sovereign interest in preventing the attachment and execution of central bank property." *NML Capital, Ltd.* v. *Banco Central de la República Argentina*, 652 F.3d 172, 188 (2d Cir. 2011), cert. denied, 133 S. Ct. 23 (2012). That special treatment tracks international norms. See United Nations Convention on Jurisdictional Immunities of States and Their Property, G.A. Res. 59/38, art. 21(1)(c), U.N. Doc. A/RES/59/38 (Dec. 2, 2004) (immunity for "property of the central bank or other monetary authority").

Section 8772 defies those goals. Foreign central banks can hardly be expected to deposit reserves at U.S. institutions if the funds are at risk of being seized whenever Congress wants to favor plaintiffs with well-connected lawyers. The impact is not limited to politically unpopular nations. The assets seized here were not *Bank Markazi's* foreign reserves, but rather assets deposited at

Citibank by *Clearstream*, a European securities intermediary, that were merely "equal in value to a financial asset of Iran * * * that [a] foreign securities intermediary * * * holds abroad." 22 U.S.C. § 8772(a)(1)(C). The district court effectively allowed plaintiffs to circumvent territorial limitations by treating the New York assets as a proxy for Bank Markazi's unattachable holdings in Europe. The decision thus discourages not just countries like Iran from holding reserves here, but also intermediaries in friendly nations like Luxembourg.

D. The Decision Invites Retaliation by Foreign Governments

A key justification for the FSIA's enactment was to promote U.S. interests by encouraging reciprocal treatment under foreign law. See H.R. Rep. No. 94-1487, at 31 (exemption for military property encourages "reciprocal application" under foreign law); cf. *id.* at 29-30 ("If U.S. law did not respect the separate juridical identities of different agencies or instrumentalities, it might encourage foreign jurisdictions to disregard the juridical divisions between different U.S. corporations * * * ."). The Executive Branch has thus opposed efforts to restrict immunity, citing the potential for retaliatory measures that would imperil U.S. property abroad. See, *e.g.*, 2007 Pub. Papers 1592, 1593-1594 (Dec. 28, 2007) (vetoing provision that "would be viewed with alarm by the international community and would invite reciprocal action against United States assets abroad").

Section 8772 raises precisely such concerns. By dictating the outcome of a case against a foreign sovereign, the statute invites other countries to intervene in litigation against the United States in their own courts. If this sort of legislation passes muster in a country with a supposedly well-developed legal system and commitment to the rule of law, it is hard to see why countries with more developing systems should feel any compunction about changing the rules for their own preferred litigants.

The United States will ultimately be worse off. "U.S. citizens, corporations, the United States government, and taxpayers have far more money invested abroad than those of any other country, and thus have more to lose if investment protections * * * [are] eroded." *Justice for Victims of Terrorism Act: Hearing on H.R. 3485 Before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary*, 106th Cong. 54 (Apr. 13, 2000) (joint statement of the State, Treasury, and Defense Departments) (emphasis omitted). For that reason too, the case warrants review.

* * * * *

This Court often grants certiorari due to a case's impact on foreign relations. See, *e.g.*, *Christopher* v. *Harbury*, 536 U.S. 403, 412 (2002) (citing "importance of th[e] issue to the Government in its conduct of the Nation's foreign affairs"); *JPMorgan Chase Bank* v. *Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 91 (2002). At a minimum, the Court should invite the Solicitor General to express the views of the United States, as it has done in similar cases. See, *e.g.*, *Rubin* v. *Islamic Republic of Iran*, 132 S. Ct. 1619 (2012); *Bank Melli Iran N.Y. Representative Office* v. *Weinstein*, 131 S. Ct. 3012 (2011); *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran* v. *Elahi*, 552 U.S. 1176 (2008).

IV. THIS CASE IS AN EXCELLENT VEHICLE

This case is also an excellent vehicle for review. It presents the *Klein* issue in its starkest form: a private suit for money. Sometimes, *Klein* arguments are raised in administrative challenges to government action. See, *e.g.*, *Robertson*, 503 U.S. at 432. But *Klein* might not apply to such suits involving "public rights." See *Biodiversity Assocs.*, 357 F.3d at 1170-1171. This case, however, involves paradigmatic private rights: a demand for money as compensation for losses. "[V]ery different considerations" arise when Congress tries to prescribe the outcome of an "action * * * at common law for damages." *The Clinton Bridge*, 77 U.S. 454, 463 (1870). This is the proverbial case where Congress has "sa[id] that a court must award Jones $35,000 for being run over by a postal truck." *Lindh*, 96 F.3d at 872.

Congress, moreover, could not have been more explicit about its intent to direct the outcome of a single case. It identified this case by caption and docket number in the statutory text. 22 U.S.C. § 8772(b). The statute's express purpose is "to ensure that Iran is held accountable for paying the judgments." *Id.* § 8772(a)(2). And the only findings the statute requires—that Bank Markazi rather than someone else has a beneficial interest in the assets—are so anemic that the Second Circuit all but conceded they are makeweights. See App., *infra*, 10a.

The statute's author, Senator Menendez, issued a press release explaining that the bill "makes it so that the [plaintiffs] will be able to attach two billion in Iranian Central Bank assets being held at a New York Bank." *Menendez Hails Banking Committee Passage of Iran Sanctions Legislation* (Feb. 2, 2012). News reports confirmed that he was "'working with all of the plaintiff groups to ensure that the approximately $2.5 billion in Iranian blocked assets located in New York are available.'" Ackley, *supra*. And he reiterated on the Senate floor that he "wanted to be sure that there was understanding on the record that Iran * * * should not be able to avoid having its assets attached." 158 Cong. Rec.

S3321 (May 21, 2012). The House sponsor agreed that the statute sought to "allow assets seized from the Iranian Government to be allocated to [plaintiffs] to recover the judgments owed to them." 158 Cong. Rec. H5569 (Aug. 1, 2012). "It is time that Iran is held accountable," he opined, and the statute would "offer [plaintiffs] the justice that they have long been denied." *Ibid.* Congress's intent to make plaintiffs prevail was thus unmistakable.

Finally, the issue's importance is underscored by the massive amount of money at stake. Congress effectively directed that nearly $2 billion held by Citibank, for another bank, ultimately for Bank Markazi's benefit be paid over to plaintiffs. Such a huge wealth transfer in violation of ordinary legal principles sets a very high-profile—and very bad—precedent for the predictability of the Nation's financial markets and the integrity of its judicial system. This Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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DECEMBER 2014

APPENDIX

APPENDIX A
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 13-2952-CV

DEBORAH D. PETERSON, *et al.*,
Plaintiffs-Appellees,

v.

ISLAMIC REPUBLIC OF IRAN, *et al.*,
*Defendants-Appellants.**

Appeal from the United States District Court
for the Southern District of New York

Argued: May 19, 2014
Decided: July 9, 2014

Before WINTER, WALKER, and CABRANES, Circuit Judges.

JOHN M. WALKER, JR., Circuit Judge.

To satisfy terrorism-related judgments against Iran, the district court (Forrest, *J.*) awarded turnover of $1.75 billion in assets under both the Terrorism Risk Insurance Act of 2002 ("TRIA") and a statute enacted specifically to address the assets at issue in this case, 22 U.S.C. § 8772. Although Iran argues that the TRIA ownership require-

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*** Consistent with the order entered by this Court on October 18, 2013, ECF No. 118, we use the short-form caption for the purpose of publishing this opinion.**

ments have not been satisfied, we need not reach this issue in light of Congress's enactment of § 8772. Iran concedes that the statutory elements for turnover of the assets under § 8772 have been satisfied, and we reject Iran's arguments that § 8772 conflicts with the Treaty of Amity between the United States and Iran, violates separation of powers, and effects an unconstitutional taking. We also conclude that the district court did not abuse its discretion in issuing an anti-suit injunction to protect its judgment. We AFFIRM.

BACKGROUND

Plaintiffs-appellees are the representatives of hundreds of Americans killed in multiple Iran-sponsored terrorist attacks, and they have billions of dollars in unpaid compensatory damages judgments against Iran stemming from these attacks.[1] Defendant-appellant Bank Markazi is the Central Bank of Iran, which is wholly owned by the Iranian government. The assets at issue in this appeal are $1.75 billion in cash proceeds of government bonds, currently held in New York by defendant Citibank, N.A., in an omnibus account for defendant Clearstream Banking, S.A., a financial intermediary. One of the customers for whom Clearstream maintains this account is defendant Banca UBAE S.p.A., an Italian bank whose customer, in turn, is Bank Markazi. Bank Markazi concedes that through this chain of parties it has at least a "beneficial interest" in the assets at issue. Plaintiffs seek turnover of these assets to satisfy their judgments.

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[1] The appellees first entered this action in various procedural postures, but they are all judgment creditors of Iran and are referred to collectively as "plaintiffs" for ease of reference.

When plaintiffs first learned of Bank Markazi's interest in the assets in 2008, they obtained restraints against transfer of the assets. In 2010, plaintiffs initiated this action against Bank Markazi, UBAE, Clearstream, and Citibank to obtain turnover of the assets under section 201(a) of the TRIA, which provides that "in every case in which a person has obtained a judgment against a terrorist party the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment." Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 201(a), 116 Stat. 2322, 2337 (codified at 28 U.S.C. § 1610 Note "Satisfaction of Judgments from Blocked Assets of Terrorists, Terrorist Organizations, and State Sponsors of Terrorism").

In February 2012, while this action was pending, President Obama issued Executive Order 13,599, which stated:

> [I]n light of the deceptive practices of [Bank Markazi] to conceal transactions of sanctioned parties [a]ll property and interests in property of the Government of Iran, including [Bank Markazi], that are in the United States . or that are or hereafter come within the possession or control of any United States person are blocked

Exec. Order No. 13,599, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012). The assets at issue (which were still under restraint) were blocked based on this Executive Order. Plaintiffs then filed a motion for partial summary judgment on their TRIA claim.

In August 2012, while that motion was pending, Congress passed the Iran Threat Reduction and Syria Human Rights Act of 2012. That Act included a section, codified at 22 U.S.C. § 8772, which stated that "the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in *Peterson et al.* v. *Islamic Republic of Iran et al.*, Case No. 10 Civ. 4518" "shall be subject to execution . . in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of [terrorism]." Pub. L. No. 112-158, § 502, 126 Stat. 1214, 1258. Plaintiffs then filed a supplemental motion for summary judgment under § 8772.

In March 2013, the district court granted summary judgment to plaintiffs, ordering turnover of the assets on the two independent bases of TRIA section 201(a) and 22 U.S.C. § 8772. *Peterson* v. *Islamic Republic of Iran*, No. 10 Civ. 4518, 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013). In July 2013, the district court issued an order directing turnover of the blocked assets and enjoining the parties from initiating a claim to the assets in another jurisdiction. *Peterson* v. *Islamic Republic of Iran*, No. 10 Civ. 4518 (S.D.N.Y. July 9, 2013), ECF No. 463. Post-judgment, plaintiffs settled with Clearstream and UBAE, and Citibank is a neutral stakeholder, leaving Bank Markazi as the sole appellant.

DISCUSSION

"We review *de novo* a district court's grant of summary judgment, construing the evidence in the light most favorable to the non-movant, asking whether there is a genuine dispute as to any material fact and whether the movant is entitled to judgment as a matter of law." *Padilla* v. *Maersk Line, Ltd.*, 721 F.3d 77, 81 (2d Cir. 2013) (citing Fed. R. Civ. P. 56(a)). "We [also] review *de novo* the district court's legal conclusions, including those interpreting and determining the constitutionality of a statute," *United States* v. *Stewart*, 590 F.3d 93, 109 (2d

Cir. 2009), or involving the "interpretation of a treaty," *Swarna* v. *Al-Awadi*, 622 F.3d 123, 132 (2d Cir. 2010).

Bank Markazi argues that the assets at issue are not "assets of" Bank Markazi as required for turnover under TRIA section 201(a), and that even if the assets were held to be "assets of" Bank Markazi, then they would be "the property of a foreign central bank . held for its own account" and thus "immune from attachment and from execution" under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1611(b)(1). We need not resolve this dispute under the TRIA, however, as Congress has changed the law governing this case by enacting 22 U.S.C. § 8772. Bank Markazi concedes that plaintiffs have satisfied the statutory elements of their § 8772 claim but argues that turnover under this provision (1) conflicts with the Treaty of Amity between the United States and Iran; (2) violates separation of powers under Article III; and (3) violates the Takings Clause. As we explain below, none of these arguments has merit. We also reject Bank Markazi's challenge to the district court's anti-suit injunction.

I. Treaty of Amity

Bank Markazi argues that turnover of the assets under § 8772 would conflict with obligations of the United States under the Treaty of Amity, which is a self-executing treaty between the United States and Iran that was signed in 1955. Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, Aug. 15, 1955, 8 U.S.T. 899; see also *McKesson Corp.* v. *Islamic Republic of Iran*, 539 F.3d 485, 488 (D.C. Cir. 2008) ("The Treaty of Amity, like other treaties of its kind, is self-executing."). But even if there were a conflict, the later-enacted § 8772 would still apply: "The Supreme Court has held explicitly that legislative acts trump treaty-made international law, stating that 'when a statute which is subsequent in time [to a treaty] is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null.'" *United States* v. *Yousef*, 327 F.3d 56, 110 (2d Cir. 2003) (alteration in original) (quoting *Breard* v. *Greene*, 523 U.S. 371 (1998)); see also *Whitney* v. *Robertson*, 124 U.S. 190, 194 (1888) ("By the constitution, a treaty is placed on the same footing, and made of like obligation, with an act of legislation . . . [and] if the two are inconsistent, the one last in date will control the other."). Indeed, when Iran raised a similar argument against turnover under TRIA section 201(a) in a different case, we concluded that even if this provision conflicted with the Treaty of Amity, "the TRIA would have to be read to abrogate that portion of the Treaty." *Weinstein* v. *Islamic Republic of Iran*, 609 F.3d 43, 53 (2d Cir. 2010).[2]

In any event, we see no conflict between § 8772 and the Treaty of Amity. Bank Markazi first contends that Congress's inclusion of Bank Markazi in its definition of "Iran" in § 8772(d)(3) violates Article III.1 of the Treaty, which states that Iranian companies "shall have their juridical status recognized within" the United States. But as Bank Markazi acknowledges, this argument has been rejected by our Court in the context of a similar provision in the TRIA. See *Weinstein*, 609 F.3d at 53 (concluding that Iran's argument was foreclosed by the Supreme

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[2] Additionally, § 8772, like TRIA section 201(a), contains a broad provision stating that it applies "notwithstanding any other provision of law," 22 U.S.C. § 8772(a)(1), and "the Courts of Appeals have regularly interpreted such 'notwithstanding' provisions 'to supersede all other laws,'" *Weinstein*, 609 F.3d at 53 (quoting *Cisneros* v. *Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993)).

Court's analysis of similar provisions in *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U.S. 176 (1982)).

Bank Markazi also argues that § 8772 violates Articles IV.1 and V.1, which require that treatment of Iranian companies and their property interests be "fair and equitable" and no "less favorable than that accorded nationals and companies of any third country." But the provision of § 8772 that Bank Markazi points to contains no country-based discrimination; rather, it simply states that "[n]othing in this section shall be construed . to affect the availability, or lack thereof, of a right to satisfy a judgment in any other action against a terrorist party in any proceedings other than [these] proceedings." 22 U.S.C. § 8772(c). Contrary to Bank Markazi's argument, this provision is expressly *non*-discriminatory.

Finally, Bank Markazi argues that turnover under § 8772 violates Article III.2, which accords Iranian companies "freedom of access to [U.S.] courts," and Article IV.2, which states that Iranian "property shall not be taken except for a public purpose" and upon "prompt payment of just compensation." As discussed below, however, § 8772 neither usurps the adjudicative role of the courts nor effects an unconstitutional taking of Bank Markazi's assets.

In sum, turnover of the blocked assets under § 8772 is entirely consistent with the United States' obligations under the Treaty of Amity. And, assuming *arguendo* that it is not, § 8772 would have to be read to abrogate any inconsistent provisions in the Treaty.

II. Separation of Powers

Bank Markazi next challenges § 8772 as violating the separation of powers between the legislative branch and the judiciary under Article III by compelling the courts to reach a predetermined result in this case. We conclude, however, that § 8772 does not usurp the judicial function; rather, it retroactively changes the law applicable in this case, a permissible exercise of legislative authority.

In the leading case to find a separation-of-powers violation, *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), Congress had passed a statute requiring courts to treat pardons of Confederate sympathizers as conclusive evidence of disloyalty, and the Supreme Court found the statute invalid for prescribing a rule of decision to the courts. But while *Klein* illustrates that Congress may not "usurp[] the adjudicative function assigned to the federal courts," later cases have explained that Congress may "chang[e] the law applicable to pending cases," even when the result under the revised law is clear. *Axel Johnson Inc.* v. *Arthur Andersen & Co.*, 6 F.3d 78, 81 (2d Cir. 1993).

In *Robertson* v. *Seattle Audubon Society*, 503 U.S. 429 (1992), Congress had passed legislation to resolve two environmental suits challenging logging in the Pacific Northwest. The result of the cases under the new law was clear: the statute stated that "Congress hereby determines and directs" that if the forests at issue were managed under the terms of the new statute, it would "meet[] the statutory requirements that are the basis for" the plaintiffs' environmental law challenges in those particular cases. 503 U.S. at 434–35 (quoting Department of the Interior and Related Agencies Appropriations Act, Pub. L. No. 101-121, § 318(b)(6)(A), 103 Stat. 701, 747 (1989)). The Ninth Circuit held this statute to be unconstitutional under *Klein* as directing a particular decision in the two cases. *Id.* at 436. But the Supreme Court rejected this position, concluding instead that "[t]o the extent that [the statute] affected the adjudication of the cases, it did so by effectively modifying the provisions at issue in those cases," not by compelling findings or results under those provisions. *Id.* at 440.

Our court rejected a similar separation-of-powers challenge to section 27A(a) of the Securities Exchange Act of 1934, which was enacted to preserve pending securities law claims that would otherwise have been dismissed as untimely. *Axel Johnson*, 6 F.3d at 80–82. We noted that, like the statute in *Robertson*, section 27A(a) does not compel findings or results under old law, but rather "constitutes a change in law applicable to a limited class of cases" that "leaves to the courts the task of determining whether a claim falls within the ambit of the statute." *Id.* at 82.

Similarly, § 8772 does not compel judicial findings under old law; rather, it changes the law applicable to this case. And like the statutes at issue in *Robertson* and *Axel Johnson*, § 8772 explicitly leaves the determination of certain facts to the courts:

> [T]he court shall determine whether Iran holds equitable title to, or the beneficial interest in, the assets [at issue] and that no other person possesses a constitutionally protected interest in the assets . under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds—
>
> > (A) equitable title to, or a beneficial interest in, the assets (excluding a custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran); or
> >
> > (B) a constitutionally protected interest in the assets

> such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein and to the extent such execution or attachment does not infringe upon such constitutionally protected interest.

22 U.S.C. § 8772(a)(2).

Bank Markazi argues that while § 8772(a)(2) may formally give discretion to the courts, it effectively compels only one possible outcome, as Iran's beneficial interest in the assets had been established by the time Congress enacted § 8772. But this argument is foreclosed by the Supreme Court's decision in *Robertson*, as the statute there was specifically enacted to resolve two pending cases, and the Supreme Court found no constitutional violation. Indeed, it would be unusual for there to be more than one likely outcome when Congress changes the law for a pending case with a developed factual record.

As we have noted, "[t]he conceptual line between a valid legislative change in law and an invalid legislative act of adjudication is often difficult to draw," *Axel Johnson*, 6 F.3d at 81, and there may be little functional difference between § 8772 and a hypothetical statute directing the courts to find that the assets at issue in this case are subject to attachment under existing law, which might raise more concerns. But we think it is clear that under the Supreme Court's guidance in *Robertson*, § 8772 does not cross the constitutional line.

III. Takings Clause

Bank Markazi's final challenge to § 8772 is that it effects an unconstitutional taking. See U.S. Const., amend. V ("[N]or shall private property be taken for public use, without just compensation."). As we have already stated in a similar case against another Iranian bank, however, "where the underlying judgment against Iran has not been challenged, seizure of [the bank's] property, as an instrumentality of Iran, in satisfaction of that liability does not constitute a 'taking' under the Takings Clause." *Weinstein*, 609 F.3d at 54.

Bank Markazi argues that this case raises retroactivity concerns that were not present in *Weinstein* because § 8772 was enacted after the assets were first restrained. But this is not a case in which legislation "imposes severe retroactive liability on a limited class of parties that could not have anticipated the liability." *E. Enters.* v. *Apfel*, 524 U.S. 498, 528–29 (1998) (plurality opinion). Iran—the 100% owner of Bank Markazi—had already been found liable to plaintiffs for billions of dollars in uncontested judgments, and § 8772 simply helps plaintiffs reach Iranian assets in partial satisfaction of these judgments. "Here, where Bank [Markazi's] assets are subject to attachment to satisfy a judgment against its foreign sovereign, the underlying purpose of the Takings Clause is in no way violated by attachment of Bank [Markazi's] assets." *Weinstein*, 609 F.3d at 54.

IV. Anti-Suit Injunction

Bank Markazi's final argument on appeal challenges the district court's order that it "shall be permanently restrained and enjoined from instituting or prosecuting any claim or pursuing any actions against Clearstream in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the Blocked Assets." *Peterson* v. *Islamic Republic of Iran*, No. 10 Civ. 4518, slip op. at 12 (S.D.N.Y. July 9, 2013), ECF No. 463. Bank Markazi argues that the district court lacked jurisdiction to issue this impermissible restraint on its property outside the United States.

As this court has explained, however, "federal courts . . have inherent power to protect their own judgments from being undermined or vitiated by vexatious litigation in other jurisdictions." *Karaha Bodas Co.* v. *Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111, 124 (2d Cir. 2007) (emphasis omitted). "The standard of review for the grant of a permanent injunction, including an anti-suit injunction, is abuse of discretion." *Id.* at 118–19. We see no abuse of discretion here, especially as Bank Markazi expressly consented to this language in the district court. At the hearing on this order, Bank Markazi's counsel objected to the anti-suit injunction as overly broad, the district court modified the language in response to this objection, and Bank Markazi's counsel then expressly stated, "That's fine with us as well, your Honor." Transcript of Conference at 24, *Peterson* v. *Islamic Republic of Iran*, No. 10 Civ. 4518 (S.D.N.Y. July 9, 2013), ECF No. 466. Because this issue does not involve jurisdictional concerns, Bank Markazi has no basis to now object to this injunction on appeal. See *Kraebel* v. *N.Y. City Dep't of Hous. Pres. & Dev.*, 959 F.2d 395, 401 (2d Cir. 1992) ("We have repeatedly held that if an argument has not been raised before the district court, we will not consider it.").

CONCLUSION

For the reasons stated above, we AFFIRM the judgment of the district court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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10 CIV. 4518 (KBF)

DEBORAH D. PETERSON, Personal Representative of the
Estate of James C. Knipple (Dec.), *et al.*,
Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI a/k/a
CENTRAL BANK OF IRAN; BANCA UBAE SPA; CITIBANK,
N.A., and CLEARSTREAM BANKING, S.A.,
Defendants.

ORDER ENTERING PARTIAL FINAL JUDGMENT PURSUANT TO FED R. CIV. P. 54(b), DIRECTING TURNOVER OF THE BLOCKED ASSETS, DISMISSAL OF CITIBANK WITH PREJUDICE AND DISCHARGING CITIBANK FROM LIABILITY

JULY 9, 2013

The Miscellaneous Proceeding

WHEREAS, the plaintiffs in the action captioned *Peterson, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action Nos. 01-cv-2094 and 2684 (D.D.C.) (the "Peterson Judgment Creditors") obtained a default judgment for damages pursuant to 28 U.S.C. § 1605(a)(7) against the

Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS");

WHEREAS, on or about June 13, June 17, and June 24, 2008, the Peterson Judgment Creditors served a writ of execution, a restraining notice and an amended restraining notice on Citibank, N.A. ("Citibank") with respect to 22 debt securities and related cash held by Citibank in an omnibus account for its customer Clearstream Banking, S.A. ("Clearstream") in which Iran was alleged to have an interest (the "Miscellaneous Proceeding");

WHEREAS, the aforementioned debt instruments and securities have varying maturity dates all of which have now matured and been converted to cash;

WHEREAS, on or about June 16, June 23 and October 27, 2008, the Peterson Judgment Creditors served writs and amended writs of execution and restraining and amended restraining notices on Clearstream in New York with respect to the same assets;

WHEREAS, upon consideration of the Order to Show Cause submitted by Citibank with supporting documentation, and following a hearing on June 27, 2008, the Court issued an Order vacating the restraints corresponding to securities ISIN US298785DM51 and ISIN US465410BK38 and upheld the restraints with respect to the remaining assets (the "Restrained Assets");

WHEREAS, the restraints, writs of execution and levies upon Citibank and Clearstream were extended by Court Order through the date of commencement of this action;

The Turnover and Interpleader Proceedings

WHEREAS, on or about June 8, 2010, the Peterson Judgment Creditors commenced this action seeking turnover of the Restrained Assets (the "Turnover Proceeding"). On or about October 20, 2010, the Peterson Judgment Creditors filed an Amended Complaint naming as defendants Iran, Bank Markazi a/k/a Central Bank of Iran ("Bank Markazi"), Banca UBAE SpA ("UBAE"), Citibank and Clearstream. The Peterson Judgment Creditors filed a Second Amended Complaint on or about December 7, 2011;

WHEREAS, on or about June 27, 2011, the Court consolidated the Miscellaneous Proceeding and the Turnover Proceeding, and authorized Citibank to file and serve third-party interpleader petitions (the "Interpleader Petitions") on all those persons or entities who had served Citibank or Clearstream with writs of execution, lis pendens or other process indicating that they may have an interest in the Restrained Assets. Citibank filed the interpleader action (the "Interpleader Action" which, together with the Miscellaneous Proceeding and the Turnover Proceeding constitute the "Consolidated Proceedings") to provide notice to potential claimants who were not parties to the proceeding, to provide notice to potential claimants to funds targeted for turnover by plaintiffs, and to obtain a discharge from liability in interpleader. On or about May 24, 2012, the Court authorized Citibank to file and serve additional third-party interpleader petitions on additional third-parties similarly situated;

WHEREAS, Citibank is a stakeholder without interest in the ultimate outcome of this dispute and its interest is in resolution of ownership of the funds at issue herein so that it may, when so ordered, ensure that they are appropriately disbursed;

WHEREAS, by Order dated November 28, 2011 the Interpleader Petitions were consolidated with the Turnover Proceeding;

WHEREAS, the judgment creditors and third-party respondents named in the Interpleader Petitions include the following plaintiffs in the following actions: (1) the Peterson Judgment Creditors; (2) *Acosta, et al.* v. *Islamic Republic of Iran, et al.*, 06-cv-0074S (D.D.C.); (3) *Greenbaum* v. *Islamic Republic of Iran, et al.*, 02-cv-0214S-RCL (D.D.C.); (4) *Estate of Michael Heiser* v. *Islamic Republic of Iran et al.*, 00-02329 and 00-cv-2104 (D.D.C.) (the "Heiser Judgment Creditors"); (5) *Jeremy and Dr. Lucille Levin* v. *The Islamic Republic of Iran, et al.*, Civil Action No. 05-cv-2494 (D.D.C.); (6) *Valore* v. *The Islamic Republic of Iran, et al.*, Civil Action No. 15-cv-1273 (D.D.C.); (7) *Beer, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action Nos. 06-cv-473 and 05-cv-I807 (D.D.C.); (8) *Kirschenbaum, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action Nos. 03-cv-1708 and 08-cv-1814 (D.D.C.); (9) *Murphy, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action No. 06-cv-596 (D.D.C.) (the "Murphy Judgment Creditors"); (10) *Rubin* v. *Islamic Republic of Iran, et al.*, Civil Action No. 01-cv-1655 (D.D.C.); (11) *Estate of Anthony K. Brown* v. *Islamic Republic of Iran, et al.*, Civil Action No. 08-cv-531 (D.D.C.); (12) *Estate of Stephen B. Bland* v. *Islamic Republic of Iran, et al.*, Civil Action No. 05-cv-2124 (D.D.C.); (13) *Bonk, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action No. 08-cv-1273 (D.D.C.); (14) *Arnold, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action No. 06-cv-516 (D.D.C.); (15) *Estate of James Silvia, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action No. 06-cv-750 (D.D.C.) (the foregoing judgment creditors numbered (1) through (15) are collectively referred to herein as "Plaintiffs"); (16) *Mwila, et al.* v. *Islamic Republic of Iran, et al.*, Civil Action No. 08-cv-1377 (D.D.C.) (the "Mwila Action"); (17) *Owens, et al.*, v. *Republic of Sudan, et al.*, Civil Action No. 01-cv-2244 (D.D.C.) (the "Owens Action"); and (18) *Khaliq, et al.* v.

Republic of Sudan, et al., Civil Action No. 08-cv-1273 (D.D.C.) (the "Khaliq Action");

WHEREAS, on or about January 13, 2013, judgment creditors of Iran who were plaintiffs in the case captioned *Shahintaj Bakhtiar* v. *Islamic Republic of Iran*, Civil Action No. 02-cv-92 (D.D.C.) moved this Court to intervene in this proceeding and assert a claim to the Blocked Assets. The Bakhtiar Plaintiffs withdrew the motion, and the writ of execution served on Citibank, on January 25, 2013;

WHEREAS, Iran and MOIS were served with the Summons and Complaint and with the Amended and Second Amended Complaint, and Iran with the Interpleader Petition (both in English and Farsi), and that said service constitutes good and sufficient service pursuant to 28 U.S.C. § 1608, but they have not appeared and default was entered against them by this Court;

WHEREAS, on or about February 5, 2012, the President of the United States issued Executive Order 13599, declaring "[a]ll property and interests in property of" Iran or Bank Markazi held in the United States or by a "United States person" "blocked" pursuant to the President's authority under the International Emergency Economic Powers Act. In compliance therewith, Citibank designated the Restrained Assets as "blocked" (hereinafter the "Blocked Assets"), reported the blocking to the United States Treasury Department's Office of Foreign Assets Control ("OFAC") as required by applicable OFAC regulations, and has held the funds in a blocked account in accordance with OFAC regulations;

The Motions and the Court's Decision

WHEREAS, on or about December 22, 2011, Clearstream moved to vacate the writs of execution and restraining orders with respect to the Restrained Assets (the "Motion to Vacate Restraints");

WHEREAS, on or about March 15, 2012, Bank Markazi moved to dismiss the Second Amended Complaint;

WHEREAS, on or about April 2, 2012, a Motion for Partial Summary Judgment with respect to the Blocked Assets was filed by and/or on behalf of the Plaintiffs, which sought to enforce turnover of the Blocked Assets pursuant to § 201 of the Terrorism Risk Insurance Act ("TRIA"), codified as a note to 28 U.S.C. § 1610;

WHEREAS, on or about August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "2012 Act"), 22 U.S.C. § 8701, *et seq.*, § 8772 of which refers explicitly to the Blocked Assets and makes them subject to turnover to the Plaintiffs subject to Court determination of certain issues enumerated therein;

WHEREAS, Plaintiffs supplemented their motion for summary judgment based on the grounds set forth in 22 U.S.C. § 8772;

WHEREAS, on or about December 10, 2012 and December 14, 2012, Clearstream moved to dismiss the turnover claims alleged in the Second Amended Complaint and certain cross-claims by incorporating by reference its Motion to Vacate Restraints, and its prior briefing concerning the supposed lack of personal jurisdiction over it;

WHEREAS, on or about December 21, 2012, UBAE moved to dismiss the Second Amended Complaint based upon the supposed lack of personal jurisdiction over it;

WHEREAS, on or about February 25, 2013, judgment creditors of Iran who were plaintiffs in the case captioned *Wultz* v. *Islamic Republic of Iran*, Civil Action No. 08-cv-

1460 (D.D.C.) moved this Court to intervene in this proceeding and assert a claim to the Blocked Assets, which motion was opposed by Plaintiffs. On May 10, 2013, the Court granted the motion shortly after Plaintiffs and the Wultz plaintiffs had reached a resolution regarding the Wultz plaintiffs' interest in the Restrained Assets;

WHEREAS, on February 28, 2013, the Court issued an Opinion and Order (the "Turnover Order"), denying in their entirety the Motions to Dismiss filed by Clearstream, UBAE and Bank Markazi, and Clearstream's Motion to Vacate Restraints, and granting Plaintiffs' Motion for Partial Summary Judgment in favor of turnover and the Bland judgment creditors' motion for execution;

WHEREAS, Clearstream and UBAE moved for reconsideration of the Turnover Order, which motion was denied by order dated May 20, 2013 (the "Reconsideration Order");

WHEREAS the findings and conclusions of the Turnover Order and the Reconsideration Order, are incorporated in this Partial Judgment by reference and with respect to which this Partial Judgment constitutes the final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure for purposes of an appeal;

WHEREAS, counsel for the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action filed declarations dated June 26, 2013, informing the Court that none of the plaintiffs in those actions have obtained judgments for damages against Iran and thus have no claim to the Blocked Assets, and consenting to entry of an order vacating the Turnover Order to the extent that it granted partial summary judgment in favor of the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action and to entry of a final order to the same extent as provided in this Partial Judgment releasing and discharging Citibank and Clearstream from any obligations to the plaintiffs in those actions pursuant to C.P.L.R. §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure as applicable, from any and all liability and obligations or other liabilities of any nature, which relate to the Blocked Assets, to the full extent that any such order also discharges and releases Citibank's obligations and liabilities as to all other parties to this action, and as further provided therein;

WHEREAS, the Plaintiffs have agreed among themselves to settle their competing claims with respect to the Blocked Assets;

WHEREAS, the Court has found that only Bank Markazi has a beneficial interest in the Blocked Assets;

WHEREAS, UBAE has represented to the Court that it claims no legally cognizable interest in or to the Blocked Assets;

WHEREAS, the Court has found that Citibank and Clearstream are neutral stakeholders of the Blocked Assets;

WHEREAS, by Order of this Court dated July 9, 2013, a trust was created for the benefit of the Plaintiffs (the "QSF") for the purpose of, *inter alia*, receiving the turnover of the Blocked Assets; holding the Blocked Assets in accordance with the terms of that Order pending appeal of this Partial Judgment Pursuant to Fed. R. Civ. P. 54(b) (the "Partial Judgment") and the Turnover Order; and distributing the Blocked Assets to the individual Plaintiffs;

WHEREAS, the Restrained and/or Blocked Assets have been maintained at Citibank in segregated and/or blocked accounts;

WHEREAS, Citibank, having commenced third-party proceedings in the nature of interpleader, as described above, pursuant to Rule 22 of the Federal Rules of Civil Procedure and other applicable provisions of law, and having brought before the Court in these proceedings all potential claimants to the Blocked Assets as in accordance with, and pursuant to the Court's June 27, 2011 and May 24, 2012 Orders so that they could assert their claims to the Blocked Assets, is entitled to an order discharging it from any and all liability with respect to any and all claims made by any party with regard to the Blocked Assets, as more fully described below;

WHEREAS, 22 U.S.C. § 8772(a)(2) provides that the Court's determination thereunder to turn over the Blocked Assets to judgment creditors like the Plaintiffs is in furtherance of the broader goals of the 2012 Act, which, as expressed in 22 U.S.C. § 8711, are to sanction Iran in order to compel Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities by imposing all available sanctions against Iran, including those imposed by the 2012 Act, in a complete, timely, and vigorous manner;

WHEREAS, the vast majority of the more than one thousand individual Plaintiffs suffered serious injuries at the hands of Iran in connection with the terrorist bombing of the U.S. Marine barracks in Beirut, Lebanon on October 23, 1983, and the balance of the Plaintiffs suffered serious injuries a number of years ago in connection with various terrorist attacks sponsored by Iran;

WHEREAS, the issues presented by the remaining claims asserted by only some of the Plaintiffs are based upon fraudulent conveyance and tort theories alleged against defendants Clearstream, Markazi and UBAE only and are related to Markazi's 2008 sales of debt securities with a face amount of $250 million, and the facts and law relevant to those claims differ from the legal and factual issues presented by Plaintiffs' claims for turnover of the Blocked Assets, as decided by the Court in connection with the Turnover Order; and

WHEREAS, by email dated May 16, 2013 the Office of the Chief Counsel (Foreign Assets Control) of the U.S. Department of the Treasury advised counsel for Citibank and the Peterson Judgment Creditors that OFAC will issue a license (the "License") authorizing the transfer of the Blocked Assets pursuant to 31 C.F.R. 501 on receipt of an order from the Court directing Citibank to turnover the Blocked Assets in accordance with this Order (see ECF No. 404);

For the foregoing reasons, and those set forth in the Turnover Order and the Reconsideration Order,

NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over the subject matter of this action and the *res*. This Court has personal jurisdiction over Citibank, Clearstream, and Bank Markazi. This Court has not made a final determination as to personal jurisdiction over UBAE with respect to the remaining claims asserted by some of the Plaintiffs against UBAE.

2. Plaintiffs are awarded judgment for turnover of the Blocked Assets.

3. OFAC shall issue the License within fourteen (14) business days after entry of this Order, and such License shall include a License to the Trustee of the QSF and UBS Wealth Management (Americas) Inc. to transfer the Blocked Assets to the Registry of the Court as may be required under paragraph 7 of this Order. Citibank shall,

within fourteen (14) business days of the issuance by OFAC of the License, deposit the Blocked Assets, plus all accrued interest thereon to date, minus any reasonable fees calculated thereon (the amount of which remains subject to Court approval), which as of June 4, 2013 constituted $1,895,600,513.03, in an account opened in the name of the QSF at UBS Wealth Management (Americas) Inc. (the "QSF Account") in accordance with, and under the terms of, the Order approving the formation of the QSF dated July 9, 2013.

4. Until either of the events in paragraphs 5 or 7 of this Order have occurred, the funds shall be held in the QSF Account and shall not be distributed therefrom to any party other than to pay to Citibank such reasonable attorneys' fees as shall be awarded by the Court in accordance with paragraph 17 hereof: to pay fees on the QSF Account, taxes on earnings from the QSF Account, and any fees and expenses payable to the trustee of the QSF as may be approved by further order of the Court.

5. Within thirty days after this Partial Judgment becomes a "Non-Appealable Sustained Judgment" (as defined below), the Plaintiffs shall apply to the Court for an order authorizing the distribution of the funds in the QSF Account in accordance with the terms of the Plaintiffs' agreement concerning the distribution of those funds.

6. This Partial Judgment shall be considered a Non-Appealable Sustained Judgment when the time to file an appeal from the Partial Judgment has expired or, if any appeal is filed and not dismissed, after the Partial Judgment is upheld in all material respects on appeal or after review by writ of certiorari and is no longer subject to review upon appeal or review by writ of certiorari.

7. If this Partial Judgment does not become a Non-Appealable Sustained Judgment because the Partial Judgment is not upheld in all material respects on appeal or after review by writ of certiorari, the Blocked Assets will be transferred to the Registry of the Court upon application for, and receipt of the License from OFAC, and shall not, in any event, be transferred to Citibank.

8. The Court intends that the deposit by Citibank of the Blocked Assets plus interest and minus fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, shall constitute a turnover to the Plaintiffs. Nevertheless, to the extent that an appellate court deems the effect of this Partial Judgment or the Turnover Order stayed pending appeal, the Court hereby extends the priority established in favor of the Plaintiffs upon the filing of this Partial Judgment under New York C.P.L.R. § 5234(c) until sixty (60) days after the later of (a) the date this Partial Judgment becomes a Non-Appealable Sustained Judgment, or (b) the filing of an order of the Court directing turnover of the Blocked Assets or any part thereof that is issued on remand from any appeal of this Partial Judgment.

9. Upon deposit by Citibank of the Blocked Assets, plus all accrued interest thereon to date, and minus any reasonable fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, Citibank shall be fully discharged pursuant to C.P.L.R. §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedure as applicable, and released from any and all liability and obligations or other liabilities of any nature, to any person or entity including but not limited to defendant Iran, any agency and instrumentality of Iran, Bank Markazi, Clearstream and UBAE, the Plaintiffs, and any other person or entity, which relate to the Blocked Assets, to

the full extent of such amounts so held and deposited in the QSF Account in compliance with this Partial Judgment.

10. Upon deposit by Citibank of the Blocked Assets, plus all accrued interest thereon to date, and minus any reasonable fees calculated thereon, into the QSF Account in accordance with paragraph 3 hereof, Defendants Iran, Bank Markazi, Clearstream and UBAE, the Plaintiffs and all other persons and entities, shall be permanently restrained and enjoined from instituting or prosecuting any claim, or pursuing any actions against Citibank in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the Blocked Assets to the full extent of such amounts so held and turned over to the QSF Account in compliance with paragraph 3 of this Order.

11. Once Citibank deposits the Blocked Assets, plus all accrued interest thereon, and minus any reasonable fees payable thereon, into the QSF Account in accordance with paragraph 3 hereof, Citibank's obligations shall be deemed discharged with respect to the Blocked Assets only under all writs of execution, notices of pending action, restraining notices and other judgment creditor process of any kind, whether served on, or delivered to Citibank, to the extent that they apply, purport to apply or attach only to the Blocked Assets (Citibank's obligations shall continue with respect to such writs of execution, notices of pending action, restraining notices and other judgment creditor process with respect to any assets other than the Blocked Assets as provided by applicable law); provided, however, that such writs of execution, notices of pending action, restraining notices or other creditor process served on behalf of any of the Plaintiffs shall continue as a lien on assets of Markazi, MOIS,

and/or Iran or any of its agencies and instrumentalities, as provided by applicable law.

12. Upon the issuance of an order authorizing the distribution of the funds in the QSF Account in accordance with paragraph 5 hereof, and provided that Clearstream does not interfere with the implementation and execution of such order in any way (including but not limited to motions or appeals directed at such order), Clearstream shall be fully discharged pursuant to C.P.L.R. §§ 5209 or 6204 and Rule 22 of the Federal Rules of Civil Procedures as applicable, and released from any and all liability and obligations or other liabilities of any nature, to any person or entity, including but not limited to defendant Iran, any agency or instrumentality of Iran, Bank Markazi, UBAE, the Plaintiffs, and any other person or entity, which relate to the Blocked Assets, to the full extent of such amounts deposited by Citibank in the QSF Account in compliance with this Partial Judgment.

13. Upon the issuance of an order authorizing the distribution of the funds in the QSF Account in accordance with paragraph 5 hereof, and provided Clearstream does not interfere with the implementation and execution of such order in any way (including but not limited to motions or appeals directed at such order), Defendants Iran, Bank Markazi and UBAE, the Plaintiffs and all other persons and entities shall be permanently restrained and enjoined from instituting or prosecuting any claim or pursuing any actions against Clearstream in any jurisdiction or tribunal arising from or relating to any claim (whether legal or equitable) to the Blocked Assets to the full extent of those funds that are being deposited by Citibank in compliance with this Partial Judgment.

14. Within fourteen (14) business days after this Partial Judgment becomes a Non-Appealable Sustained

Judgment and the issuance of a payment to the Heiser Judgment Creditors in accordance with paragraph 5 hereof, the Heiser Judgment Creditors shall file a stipulation of voluntary partial dismissal with prejudice with respect to Citibank and the Blocked Assets only in the form attached to this Partial Judgment as Exhibit A in the following actions: *Estate of Michael Heiser, et al.* v. *Clearstream Banking, S.A.*, Case No. 11 Civ. 1597 (S.D.N.Y.), *Estate of Michael Heiser, et al.* v. *Citibank, N.A.*, Case No. 11-cv-1698 (RPB) (S.D.N.Y.) and *Estate of Michael Heiser, et al.* v. *JPMorgan Chase Bank, N.A., et al.*, Case No. 11-cv-2570 (LBS) (S.D.N.Y.).

15. Within fourteen (14) business days after Citibank deposits the Blocked Assets, plus all interest accrued thereon, and minus any reasonable fees payable thereon, into the QSF Account in accordance with paragraph 3 hereof, the Murphy Judgment Creditors shall file a stipulation of voluntary dismissal with prejudice with respect to the remaining claims asserted in their pleadings against Citibank that have not been adjudicated by this Partial Judgment, in the form attached to this Partial Judgment as Exhibit B.

16. Citibank shall be entitled to apply for its reasonable costs and attorneys' fees in connection with these proceedings and the parties reserve their right to object to such application. Notwithstanding Fed. R. Civ. P 54(d)(2)(B), Citibank shall be entitled to submit its motion or application for attorney's fees and costs at any time until fourteen (14) days after this Partial Judgment and the Turnover Order shall be considered a Non-Appealable Sustained Judgment.

17. Upon the later of: (a) fourteen (14) business days from the date on which the Court approves any award in respect of Citibank's reasonable costs and attorneys'

fees; or (b) fourteen business days after this Partial Judgment becomes a Non-Appealable Sustained Judgment, the QSF shall pay Citibank any amount of attorneys' fees and costs awarded by the Court from the QSF Account. The payment of those fees and expenses from the QSF Account shall not prejudice the right of any party to pursue an appeal of any decision reached by the Court with respect to the payment of Citibank's fees and expenses.

18. This Partial Judgment, which incorporates the Turnover Order and the Reconsideration Order, constitutes a final judgment within the meaning of Federal Rule of Civil Procedure 54(b), and there is no just reason for delay of the entry of judgment as provided herein.

19. The Turnover Order is hereby vacated only to the extent that it granted partial summary judgment in favor of the plaintiffs in the Owens Action, the Khaliq Action and the Mwila Action.

20. Among other reasons, the Court concludes that entry of a final judgment pursuant to Rule 54(b) is appropriate because: (a) the factual and legal issues raised by the remainder of the claims that Plaintiffs have alleged are substantially different from the factual and legal issues presented by the claims under TRIA and 22 U.S.C. § 8772 adjudicated in connection with the Turnover Order regarding Plaintiffs' motion for partial summary judgment; (b) the Plaintiffs in this action are victims of terrorism who have been waiting for some compensation for their losses for many years, and most Plaintiffs are victims of the 1983 attack on the Marine Barracks in Beirut, Lebanon; (c) the Court credits the representations of Plaintiffs' counsel that many of the Plaintiffs are elderly and many others have passed away since the terrorist attacks that underlie this matter, and

further delay in payment to the Plaintiffs will result in many victims of the relevant terrorist attacks receiving no compensation at all for their losses; (d) the Court credits the representations of Plaintiffs' counsel that many of the Plaintiffs face difficult financial circumstances and have a significant need for the funds owed to them in connection with this action; (e) several groups of creditor plaintiffs are not asserting any claims that remain to be adjudicated in this matter, so this Partial Judgment resolves all matters relevant to those Plaintiffs; and (f) the goal of Congress to compel Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities by timely and vigorous imposition of sanctions on Iran under the 2012 Act is furthered by the finality of any determination by this Court to turn over the Blocked Assets to the Plaintiffs in accordance with 28 U.S.C. § 8772.

21. Upon deposit by Citibank of the Blocked Assets, plus all interest accrued thereon, and minus any reasonable fees into the QSF Account in accordance with paragraph 3 hereof, Citibank shall be deemed to have satisfied all duties and responsibilities of an interpleader Stakeholder in these Consolidated Proceedings. Citibank shall have no continuing or further obligations with respect to those assets, and all claims, counterclaims and cross-claims that were or could have been asserted against Citibank in this action by any party herein relating to the Blocked Assets (to the full extent of such amounts so held and turned over to the QSF Account in compliance with Paragraph 3 of this Order) shall be dismissed with prejudice. There being no additional claims asserted against Citibank in this action, upon deposit of the Blocked Assets, plus interest and minus reasonable fees payable thereon, into the QSF Account in accord-

ance with Paragraph 3 hereof, it shall be dismissed as a party from this action; provided however, that if, notwithstanding paragraph 7 of this Order, the Blocked Assets are returned to Citibank pending proceedings on remand after any appeal of this Partial Judgment, Citibank may again be joined in this action by order of the court and the dismissal, discharge and release contained in this Partial Judgment shall be deemed null and void.

22. This Court shall retain jurisdiction over this matter to adjudicate the remaining claims asserted by the Plaintiffs against Clearstream, Markazi and UBAE, and all funds deposited into the QSF Account shall remain subject to the Court's jurisdiction until they are distributed in accordance with the terms of this Partial Judgment.

SO ORDERED.

Dated: New York, New York
July 9, 2013

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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10 CIV. 4518 (KBF)

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al.,
Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN, et al.,
Defendants.

MEMORANDUM DECISION & ORDER

MAY 20, 2013

KATHERINE B. FORREST, District Judge:

Defendants Clearstream Banking, S.A., and Banca UBAE, S.p.A. have moved for reconsideration of the Court's Opinion and Order of February 28, 2013 ("February 28 Opinion"), unsealed on March 13, 2013. *Peterson* v. *Islamic Republic of Iran,* 10 CIV 4518 (KBF), 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013). The February 28 Opinion, *inter alia,* denied defendants' motions to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) and granted plaintiffs' motion for partial summary judgment—finding that approximately $1.75 billion in cash frozen in an account at Citibank (the "Blocked Assets") is subject to turnover to plaintiffs pursuant to 22 U.S.C. § 8772, the Terrorism Risk Insurance Act ("TRIA"), and the Foreign Sovereign Immunities Act ("FSIA"). The February 28 Opinion did not address plaintiffs' remaining common-law causes of action for fraudulent conveyance, tortious interference with collection of a money judgment, and prima facie tort—all of which relate to defendants' transfer of bonds with a face value of $250 million (the "$250 Million Bonds") out of the United States.

While defendants challenge distinct aspects of the February 28 Opinion—Clearstream asks for reversal of the partial summary judgment and UBAE protests the denial of its 12(b)(2) motion—both defendants' arguments depend upon a single premise: that the Court did not adequately consider the policy and statutory preferences favoring the free functioning of intermediaries in global financial markets. Such freedom, defendants argue, dictates that cash bond proceeds held in correspondent accounts at U.S. banks on behalf of foreign banks cannot subject the foreign banks to jurisdiction in New York courts, nor can the proceeds be attached by judgment creditors of the foreign banks' clients.

As a general matter, of course, well-functioning markets are important. The Court's February 28 Opinion in no way, however, impedes such functioning. Movants are wrong to argue that this economic principle may act as a shield to override the clear intent of Congress that the Blocked Assets are subject to execution and that the parties are subject to this Court's jurisdiction. Therefore, and for the reasons set forth below, both motions for reconsideration are DENIED.

I. STANDARD OF REVIEW

Clearstream and UBAE seek reconsideration of the Court's February 28 Opinion pursuant to Local Rule 6.3

and Fed. RR. Civ. P 59(e) and 52(b). The identical standard of review governs all three rules. *R.F.M.A.S., Inc.* v. *Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009) (standard identical for Rule 59(e) and Local Rule 6.3); *Sank* v. *City Univ. of New York*, 2003 WL 21403682 (S.D.N.Y. June 19, 2003) (same standard for 52(b), which requests revised findings of fact, and Local Rule 6.3).

Under these rules, the movant must show that the Court overlooked "controlling decisions or factual matters" that had been previously put before it. *R.F.M.A.S., Inc.*, 640 F Supp. 2d at 509 (discussion in the context of both Local Civil Rule 6.3 and Fed. R. Civ. P 59(e)); see also *Padilla* v. *Maersk Line, Ltd.*, 636 F. Supp. 2d 256, 258-59 (S.D.N.Y. 2009). "Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court." *Range Road Music, Inc.* v. *Music Sales Corp.*, 90 F Supp. 2d 390, 391-92 (S.D.N.Y. 2000); see also *SimplexGrinnell LP* v. *Integrated Sys. & Power, Inc.*, 642 F Supp. 2d 206 (S.D.N.Y. 2009) ("A motion for reconsideration is not an invitation to parties to 'treat the court's initial decision as the opening of a dialogue to advance new theories or adduce new evidence in response to the court's ruling.'") (internal quotation and citations omitted); *United States* v. *Local 1804-1, Int'l Longshoreman's Ass'n*, 831 F. Supp. 167, 169 (S.D.N.Y. 1993) (Rule 52(b) motions should be granted where necessary to correct "manifest errors of law or fact," but they cannot be used to "relitigate old issues, to advance new theories, or to secure a rehearing on the merits").

II. ANALYSIS AS TO CLEARSTREAM

Clearstream challenges the entry of partial summary judgment in favor of plaintiffs and several factual statements in the February 28 Opinion. It does not ask the Court to reconsider the denial of its Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction.

a. Partial Summary Judgment

Clearstream suggests the Court committed "clear error" in finding that the $1.75 billion in cash held at Citibank is beneficially owned by defendant Bank Markazi (the central bank of Iran) and thus subject to execution and turnover to plaintiffs. However, Clearstream does not point to "manifest errors of law or fact" justifying reconsideration. See *Local 1804-1, Int'l Longshoreman's Ass'n*, 831 F. Supp. at 169.

Clearstream seeks to relitigate issues the Court fully considered and rejected in its February 28 Opinion. As such, the Court will not devote additional analysis to Clearstream's arguments that it has "consistently asserted" property rights in the $1.75 billion in cash (Clearstream Recon. Br. at 6-7)[1] or that awarding those assets to plaintiffs would constitute an unconstitutional taking

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[1] Clearstream suggests the Court overlooked its "consistent" assertion of rights as a beneficial owner of the $1.75 billion. However, it cites only three instances—all in legal argument rather than evidence of an admissible character—in which Clearstream mentioned an interest in the assets. Plaintiffs rightly point out that, more often, Clearstream has exhaustively disclaimed ownership of the Blocked Assets. (See PIs.' Recon. Br. at 4 (noting Clearstream's statements in briefs that it "does not acquire any proprietary rights in the securities entitlements in Bank Markazi's account", that it acts "not for its own financial interests but on behalf of its customers", and that the Blocked Assets "are held ultimately for the benefit of Bank Markazi"). Further, the Court's February 28 Opinion recited Bank Markazi's consistent position—uncontested by Clearstream—that it is the sole owner of the assets. See *Peterson*, 2013 WL 1155576, at *23 n.10.

(*Id.* at 10; Clearstream Reply Br. at 1, 4).[2]

Nor is Clearstream's statutory argument meritorious. Clearstream suggests the Court committed clear error in its interpretation of a key statute—22 U.S.C. § 8772—by which it concluded that Bank Markazi is the sole beneficial owner of the Blocked Assets. Clearstream argues that § 8772 does not preempt—but rather must incorporate—the definitions of ownership supplied by Article 8 of the Uniform Commercial Code, as adopted by New York law. See N.Y. U.C.C. L. Art. 8. By the U.C.C. definition, Clearstream suggests, it is the only party with an ownership interest in the Blocked Assets held at Citibank in New York.

Even assuming that such an argument is proper on a motion for reconsideration,[3] however, it must be rejected on at least two grounds. First, Clearstream's reading of § 8772 is erroneous. Section 8772(a) reads, in relevant part, as follows:

> (1) In general: Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law, a financial asset that is—

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[2] The Court addressed the takings arguments in its February 28 Opinion. See *Peterson*, 2013 WL 1155576, at *31-*33.

[3] Clearstream argued at length in its briefing on its motion to vacate the restraints on the Blocked Assets and in opposition to plaintiffs' partial summary judgment motion that § 8772 did not preempt the U.C.C. It did not, however, make the precise statutory interpretation argument it is making here—that § 8772 explicitly incorporates the U.C.C. definition of ownership. While it is improper for a party to raise new arguments for the first time on reconsideration, see, *e.g.*, *SimplexGrinnell*, 642 F. Supp. 2d at 209-210, in the interests of a full record the Court will address this new application of Clearstream's otherwise well-worn U.C.C. argument.

(A) held in the United States for a foreign securities intermediary doing business in the United States;

(B) a blocked asset (whether or not subsequently unblocked) that is property described in subsection (b); and

(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad,

shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, or hostage-taking, or the provision of material support or resources for such an act.

(2) Court determination required: In order to ensure that Iran is held accountable for paying the judgments described in paragraph (1) and in furtherance of the broader goals of this Act to sanction Iran, prior to an award turning over any asset pursuant to execution or attachment in aid of execution with respect to any judgments against Iran described in paragraph (1), the court shall determine whether Iran holds equitable title to, or the beneficial interest in, the assets described in subsection (b) and that no other person possesses a constitutionally protected interest in the assets described in subsection (b) under the Fifth Amendment to the Constitution of the United States. To the extent

> the court determines that a person other than Iran holds—
>
> (A) equitable title to, or a beneficial interest in, the assets described in subsection (b) (excluding a custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran); or
>
> (B) a constitutionally protected interest in the assets described in subsection (b), such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein and to the extent such execution or attachment does not infringe upon such constitutionally protected interest.

22 U.S.C. § 8772(a).

In its February 28 Opinion, the Court held that § 8772 preempts any state law (including the U.C.C.) that would purport to confer an ownership interest on Clearstream. The primary basis for the Court's holding was § 8772's statement that it applies "notwithstanding any other provision of law, and preempting any inconsistent provision of State law." 22 U.S.C. § 8772(a)(1).

Clearstream argues that the Court's interpretation is erroneous. It first suggests that the Court overlooked that the "notwithstanding" clause of § 8772(a)(1), which preempts conflicting state law, is made expressly "subject to paragraph (2)". The paragraph two (§ 8772(a)(2)) analysis must therefore occur before the Court preempts any conflicting portion of state law under paragraph one. The paragraph two analysis requires the Court to determine whether a person other than Iran holds "equitable title to," a "beneficial interest in", or a "constitutionally protected interest" in the assets it determines are "Blocked Assets" Clearstream argues that because § 8772 lacks definitions of equitable title, beneficial interest, and constitutional interest, the Court must apply the presumption that state law—here, U.C.C. Art. 8—supplies the definitions of ownership where federal law is silent. Clearstream further argues this conclusion is strengthened by § 8772(c), which states, "[n]othing in this section shall be construed to preempt State law, including the Uniform Commercial Code, except as expressly provided in subsection (a)(1)." 22 U.S.C. § 8772(c) (emphasis added). Thus, according to Clearstream, the Court must look to Article 8 of the U.C.C. and conclude that Clearstream has an ownership interest in the Blocked Assets.

The Court disagrees with Clearstream's statutory interpretation. Instead, the following syllogism holds: first, § 8772(a)(1) specifically preempts state law that would be inconsistent with execution against a Blocked Asset. Next, the Court determined that the $1.75 billion in cash here is, in fact, a Blocked Asset for the purposes of § 8772(a)(1). It did so, in part, by recognizing that a Blocked Asset includes a "custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran." 22 U.S.C. § 8772(a)(2)(A). The Court found Clearstream to be such a related intermediary. Congress thus intended (by enacting § 8772(a)(1)): (1) that assets held by an intermediary such as Clearstream are Blocked Assets and (2) to preempt any provision of state law that would prevent the execution on those assets. Therefore, the only reading of paragraph two (§ 8772(a)(2)) consistent with Congressional intent is one in which an intermediary such as Clearstream has no beneficial, constitutional, and equitable ownership in the Blocked Assets. By elimination, the only party that could have an ownership interest in those Blocked Assets is Bank Markazi. No resort to state law is necessary or permitted. Nor is the statement in § 8772(c) that "[n]othing in this section shall be construed . . to preempt State law, including the Uniform Commercial Code" of any moment; that subsection is inapplicable where, as here, such preemption is "expressly provided in subsection (a)(1)"

Even if Clearstream is correct that § 8772 incorporates state law definitions of ownership, however, those definitions support the Court's grant of partial summary judgment. Clearstream argues that Article 8 of the UCC—which deals with Investment Securities—would apply to the Blocked Assets under state law. That assumption is incorrect. The Blocked Assets have now been entirely redeemed and converted to cash; the bonds are no more. Section 8-112 of the UCC—on which Clearstream relies—only "govern[s] the extent to which and the means by which any interest in a certificated security, uncertificated security or security entitlement . may be reached." N.Y. C.P.L.R. § 5201(c)(4) (emphasis added). Cash held by someone other than the judgment debtor is subject to turnover under N.Y. C.P.L.R. § 5225(b); U.C.C. § 8-112 is inapplicable. Clearstream is thus a mere "garnishee" under New York law and has no property right in the Blocked Assets, even assuming that § 8772 incorporates state law.[4] In the absence of the federal blocking regimes that froze the account at Citibank, Clearstream would have been obligated to transfer the Blocked Assets to their one true owner—Bank Markazi. See N.Y. U.C.C. L. § 8-505 (McKinney's 2013). The Court thus finds no "manifest errors of law or fact" to reconsider the grant of plaintiffs' motion for partial summary judgment or to deny Clearstream's motion to vacate the restraints on the Blocked Assets.

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[4] The Court has also rejected Clearstream's argument that, as the named account holder at Citibank, a judgment creditor could attach only Clearstream's judgment debts and not those of Bank Markazi. Bank Markazi cannot hide behind the Clearstream veil where only Bank Markazi has an ownership interest in the funds in the account at Citibank. To hold otherwise would permit a terrorist state judg-

b. Factual Statements

In addition to its legal arguments on reconsideration, Clearstream asks the Court to vacate certain factual findings stated in the February 28 Opinion. Most of the statements to which Clearstream objects were not factual findings. Rather, they were merely findings that plaintiffs' complaint made plausible allegations (as required to pass the motion to dismiss stage);[6] the Court will not revisit those statements. The Court has reviewed the remainder of the alleged factual errors and concludes that none is material to the outcome of the motions resolved by the February 28 Order.

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ment debtor to avail itself of the benefits of the New York banking system without bearing any legal risk whatsoever.

[6] Clearstream challenges the following passages from the February 28 Opinion: (1) "Plaintiffs have sufficiently alleged, and the facts of the record support, that Bank Markazi and Clearstream were aware of Plaintiffs' judgments at the time that UBAE was engaged to open an account and engage in a sale transaction on behalf of Bank Markazi." *Peterson*, 2013 WL 1155576, at *17. (2) "Clearstream allegedly instructed Citibank to make an electronic funds transfer ("EFT") of the cash from Citibank to UBAE's correspondent bank in New York, HSBC." *Id.* at *4. (See also Clearstream Recon. Br. at 12.) As the February 28 Opinion indicated, the above statements evaluated the sufficiency of plaintiffs' pleading for the purposes of the motion to dismiss; the Court did not rely upon these statements in granting plaintiffs' motion for partial summary judgment or denying the Clearstream motion to vacate the restraints.

III. ANALYSIS AS TO UBAE

UBAE challenges the Court's denial of its motion to dismiss for lack of personal jurisdiction. It also asks that certain factual statements in the February 28 Order be vacated. Neither challenge merits reconsideration.

a. Personal Jurisdiction

In its February 28 Order, the Court held that UBAE is subject to specific personal jurisdiction under either the New York long-arm statute, N.Y. C.P.L.R. § 302(a)(1), or the federal question long-arm statute, Fed. R. Civ. P 4(k)(2). UBAE argues that the Court committed manifest errors of law and fact insofar as it (1) applied an incorrect standard of review on a 12(b)(2) motion and concluded that (2) UBAE transacted business in New York under C.P.L.R. § 302(a)(1); (3) UBAE purposefully availed itself of New York law; (4) UBAE's New York contacts are closely related enough to this litigation to support the due process requirements of specific personal jurisdiction; and (5) Rule 4(k)(2) supports personal jurisdiction as to the causes of action regarding the $250 Million Bonds. The Court finds no manifest error.

i. Standard of Proof

UBAE first misstates plaintiffs' burden of proof on a pre-discovery Rule 12(b)(2) motion, suggesting that declarations from its corporate representative, Biagio Mattranga, are sufficient to defeat jurisdiction. This ignores the precedent in this Circuit that, where no discovery has yet occurred, plaintiffs need only make out a prima facie case of personal jurisdiction; they are not required to prove personal jurisdiction by a preponderance of the evidence. See *Ball* v. *Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990) ("prior to discovery, a plaintiff challenged by a jurisdiction testing motion may defeat the motion by pleading in good faith . legally sufficient allegations of jurisdiction. At that preliminary stage, the plaintiff's prima facie showing may be established solely by allegations.")

For the purposes of a pre-discovery 12(b)(2) motion, "[t]he allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits." *Seetransport Wiking Trader Schiffarhtsgellschaft MBH & Co., Kommanditgesellschaft* v. *Navimpex Centrala Navala*, 989 F.2d 572, 580 (2d Cir. 1993). Plaintiff must submit affidavits to counter conflicts with defendants' affidavits; any such conflicts are then resolved in plaintiffs' favor, "and the plaintiffs' prima facie showing is sufficient notwithstanding the contrary presentation by the moving party." *Id.*

Here, while discovery has occurred with respect to plaintiffs' turnover cause of action, discovery was stayed as to the $250 Million Bonds causes of action until March 18, 2013 (ECF No. 372)—after the Court issued its February 28 Opinion. Plaintiffs therefore need only raise a prima facie case of personal jurisdiction with respect to the $250 Million Bonds causes of action. In addition, the Court found in its February 28 Opinion that the evidence plaintiffs submitted as to UBAE (even in the absence of a complete discovery record) is sufficient to require UBAE to appear in this action. UBAE's argument as regards plaintiffs' standard of proof is meritless.

ii. Transacting Business Jurisdiction

As the Court concluded in its February 28 Opinion, plaintiffs make out a prima facie case of "transacting business" jurisdiction under N.Y. C.P.L.R. § 302(a)(1) with respect to UBAE.[6] UBAE challenges three aspects of the Court's conclusion—that UBAE did not transact business in New York, that it lacked purposeful availment of New York law,[7] and that the contacts with New York were not sufficiently related to this litigation.

UBAE first challenges purposeful availment and relatedness based on the geographical location of the bonds here at issue. The February 28 Opinion cited the fact that the UBAE/Markazi bonds held by Clearstream Luxembourg were physically located in New York as key evidence of purposeful availment and relatedness. See *Peterson*, 2013 WL 1155576, at *16. UBAE argues that its purchase of the bonds occurred after they were already custodized in New York, so its availment of New York is accidental, not purposeful. It cites a case in which a manufacturer of allegedly patent-infringing coffeemakers defeated a personal jurisdiction motion where the infringing products were transferred into New York by a third party, over whom the defendant lacked control. See *Wing Sing Prods. (BVI) Ltd.* v. *Simatelex Manufactory Co., Ltd.*, 479 F. Supp. 2d 388, 398 (S.D.N.Y. 2007).

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[6] To establish that jurisdiction, plaintiffs must make out a prima facie case that UBAE "in person or through an agent," "transacts any business within the state or contracts anywhere to supply goods or services in the state," and that those transactions—also known as "minimum contacts"—relate to the conduct at issue. N.Y. C.P.L.R. § 302(a)(1). In addition, to satisfy due process, plaintiffs must demonstrate that UBAE's conduct indicates "purposeful availment" of the New York forum. See *Licci ex rel. Licci* v. *Lebanese Canadian Bank, SAL* ("*Licci I*"), 673 F.3d 50, 60 (2d Cir. 2012) certified question accepted *sub nom. Licci* v. *Lebanese Canadian Bank*, 18 N.Y.3d 952 (2012) and certified question answered *sub nom. Licci* v. *Lebanese Canadian Bank* ("*Licci II*"), 20 N.Y.3d 327 (2012).

[7] Such purposeful availment is necessary to satisfy the due process requirements of § 302(a)(1). See *CutCo Indus., Inc.* v. *Naughton*, 806 F.2d 361, 365 (2d Cir. 1986) (Section 302(a)(1) "transaction of business" requires showing that non-domiciliary "purposefully avails [itself] of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws ") (quotation omitted).

The Court rejects this comparison; UBAE stands in a much different position than the defendants in *Wing Sing Products*. The location of the bonds here did not change during the relevant period; rather, UBAE knew (or should have known) that the bonds were custodized in New York when it agreed to purchase them from Bank Markazi. Once it executed that purchase, UBAE had availed itself of the New York forum.

UBAE next argues that the Court erred in finding that its use of a correspondent bank account at HSBC in New York constituted "transacting business" in New York and satisfied the purposeful availment and relatedness requirements for specific jurisdiction. The Court cannot agree.

The February 28 Opinion found that the allegations in plaintiffs' complaint, combined with evidence it submitted via an affidavit of counsel, demonstrated transaction of business, relatedness and purposeful availment. Among these, plaintiffs presented UBAE's own sales records indicating that UBAE distributed sales proceeds and interest payments to Bank Markazi from the very $250 Million Bonds at issue in the common law claims, via the correspondent account at HSBC. (See Decl. of Liviu Vogel in Opp. to UBAE Mot. to Dismiss ("Vogel UBAE MTD Decl.") Exs. C-F.) UBAE contests this pathway of proceeds, suggesting that the interest payments were withdrawn from its Clearstream account and paid to its own accounts in Rome, rather than to Bank Markazi. (See UBAE Reconsid. Br. at 9.) It argues that in *Licci II*—a case the Court relied upon heavily for its denial of

UBAE's 12(b)(2) motion—such direct payments were key evidence that a party "transacted business" in New York. Assuming UBAE is correct as to the law,[8] its factual dispute is of no moment. Where, as here, the parties present conflicting affidavits regarding personal jurisdiction, the Court must draw the factual inferences in favor of plaintiffs. See *Seetransport Wiking Trader Schiffarhtsgellschaft MBH & Co.*, 989 F.2d at 580. For the purposes of personal jurisdiction, then, the alleged use of the HSBC account is sufficient to satisfy the prima facie case.

Further, plaintiffs also sufficiently allege that UBAE caused its agent—Clearstream—to transact business in New York. UBAE argues the Court overlooked the agency law requirement that a principal exercise control over its agent. See, *e.g.*, *CutCo Indus., Inc.* v. *Naughton*, 806 F. Supp. 2d 361, 366 (S.D.N.Y. 2008). The Court did not overlook this principle. In fact, UBAE concedes that it caused Clearstream to effectuate the sale of the $250 Million Bonds—the very assets at issue in this suit. *Peterson*, 2013 WL 1155576, at *3 (citing Matranga Reply Decl. ¶ 7.) Plaintiffs allege that Clearstream then transferred the proceeds to Clearstream's correspondent account at JP Morgan Chase—also in New York—then on to UBAE's account at HSBC. *Id.* HSBC allegedly followed Clearstream's order (on behalf of UBAE and Bank Markazi) to transfer the proceeds to UBAE in Rome. *Id.* These activities alone would satisfy the purposeful availment and relatedness requirements.[9] However, the SAC makes further allegations that further substantiate control by UBAE over Clearstream—namely that UBAE indicated where interest and sales payments should be made and which bonds to hold or sell. (See, *e.g.*, SAC ¶¶ 117, 167-68, 171, 213-215.)

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[8] The Court doubts this legal conclusion but will await fuller briefing of the issue as relates to the $250 Million Bonds causes of action. Whether UBAE transferred the interest payments directly to Markazi in the United States, or first expatriated those funds to Rome before crediting the Markazi account does not seem jurisdictionally significant. The alleged conduct remains part of the same transaction, for the benefit of the same defendant, initiated (if not completed) in the United States. The key factor supporting jurisdiction in *Licci II*—clearly met in this case—is that the "defendant's use of a correspondent bank account in New York, even if no other contacts between the defendant and New York can be established was purposeful." *Licci II*, 20 N.Y.3d at 338 (quoting *Licci I*, 673 F.3d at 66).

UBAE's final challenge relates to the Second Circuit's recent opinion in *In re Terrorist Attacks on Sept. 11, 2001* (*"Terrorist Attacks VII"*), No. 11-3294, et al., 2013 WL 1590255 (2d Cir. Apr. 16, 2013). Subsequent to its briefing on the instant motion, UBAE filed a notice of supplemental authority regarding *Terrorist Attacks VII*, arguing that the case compels the Court to revisit its personal jurisdiction holding. This Court rejected similar arguments in the February 28 Opinion and finds *Terrorist Attacks VII* inapposite.

First, *Terrorist Attacks VII* speaks most directly about general jurisdiction, not specific jurisdiction. The Second Circuit held that the mere use of a correspondent back account and the maintenance of a website that allows account holders to manage their accounts was insufficient to support general jurisdiction. *Id.*, at *16. The Circuit reiterated the longstanding view of the federal courts that the contacts giving rise to general jurisdiction must feature many continuous contacts and a degree of permanence; the mere existence of a correspondent account (that may not be in use) does not meet that threshold. *Id.*

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[9] UBAE suggests that plaintiffs' declaration in opposition to the 12(b)(2) motion constituted an improper attempt to amend its complaint that the Court should have ignored. This is not the case. As outlined above, in considering a personal jurisdiction motion the Court must look to the allegations made by plaintiffs' complaint and, where defendants submit conflicting affidavits, to plaintiffs' affidavits as well. See *Seetransport Wiking Trader Schiffarhtsgellschaft MBH & Co.*, 989 F.2d at 580.

The *Terrorist Attacks VII* court specifically exempted specific jurisdiction from its holding with respect to correspondent bank accounts. It distinguished—without disapproving—*Licci II*, which held that the use of correspondent accounts could sometimes constitute a "transaction" of business that satisfied § 301(a)(2) jurisdiction. The Court's February 28 Opinion made specific findings that plaintiffs allege sufficient use of the U.S. correspondent accounts by UBAE to give rise to personal jurisdiction here. See *Peterson*, 2013 WL 1155576, at *16-*17.

Nor do the general statements in *Terrorist Attacks VII* regarding purposeful availment suggest the February 28 Opinion was in error. In *Terrorist Attacks VII*, the Second Circuit reiterated the well-established rule that a defendant must have "purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities." *Terrorist Attacks VII*, 2013 WL 1590255, at *10 (quotations omitted). UBAE suggests no purposeful direction occurred here.

As analyzed above and in the February 28 Opinion, however, the activities allegedly conducted by UBAE were clearly directed at the New York forum: UBAE admits it transferred assets through its correspondent accounts at New York banks. It caused its agent, Clearstream, to engage in substantial commercial activity in New York, related to the bonds here at issue. Plaintiffs allege UBAE did so in full knowledge that Bank Markazi intended to evade U.S. sanctions by employing UBAE as a go-between. This alleged knowledge distinguishes UBAE from the parties over which the *Terrorist Attacks VII* court refused to exercise jurisdiction. Finally, UBAE is alleged to have aided Markazi in transferring the $250 Million Bonds out of the United States, again using U.S. based bank accounts and financial institutions to do so.[10] All of these activities—many of which UBAE admits occurred—constitute purposeful availment.

iii. 4(k)(2) Jurisdiction

The February 28 Opinion found that, in addition to § 302(a)(1) specific jurisdiction, Fed. R. Civ. P. 4(k)(2) provides an equally viable basis to exercise jurisdiction over UBAE. The parties did not brief Rule 4(k)(2) as a possible basis for personal jurisdiction on UBAE's original 12(b)(2) motion; in the interests of a full hearing, the Court will thus consider UBAE's 4(k)(2) arguments here. On reconsideration, UBAE argues that Rule 4(k)(2) jurisdiction fails based upon the same due process concerns highlighted above. It further suggests that Rule 4(k)(2) could—at most—support jurisdiction over the turnover cause of action and not the common law causes of action (*e.g.*, fraudulent conveyance, prima facie tort, and tortious interference with collection of money judgment) because only the turnover cause of action involves a federal question. UBAE is incorrect.

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[10] UBAE strenuously contests that this transfer could form the basis of any claim against it because, it argues, the sale of the $250 million in bonds occurred five months before plaintiffs registered their judgment in New York. (See Letter of Ugo Collela, Esq. to Hon. Katherine B. Forrest, Apr. 22, 2013, ECF No. 395.) At this stage, however, plaintiffs need not prove the merits of their common law claims to subject UBAE to this Court's jurisdiction. The conduct UBAE admits as regards the Blocked Assets and $250 million in bonds is sufficient. Further, plaintiffs' allegations and evidence regarding the allegedly fraudulent conveyance—even if contested—are sufficient to make out a prima facie case of personal jurisdiction.

The Court rejects UBAE's due process arguments with respect to Rule 4(k)(2) for the same reasons as those related to C.P.L.R. § 302. As to the common law claims, the Court first notes that all of the common law causes of action involve a predicate—and central—federal question. Only where plaintiffs prove that federal sovereign immunity law entitled them to turnover of the $250 million in bonds can their claims for fraudulent conveyance, prima facie tort, and tortious interference have a basis in law. These claims therefore present a sufficient federal question, even in the absence of the turnover cause of action.[11]

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[11] Statutory federal question jurisdiction exists under 28 U.S.C. § 1331 when three factors are satisfied: (1) the claims must satisfy the "well-pleaded complaint rule" (*e.g.*, that plaintiffs' complaint—rather than merely an anticipated defense or counterclaim—states a federal question), see *Louisville & N.R. Co.* v. *Mottley*, 211 U.S. 149, 153 (1908); (2) the federal question must be "sufficiently substantial" to justify the original jurisdiction of the federal courts, see *Hagans* v. *Lavine*, 415 U.S. 528, 536 (1974); and (3) the federal law at issue must be sufficiently central to the dispute to justify federal question jurisdiction, see *Smith* v. *Kansas City Title & Trust Co.*, 255 U.S. 180 (1921). While a cause of action is typically a federal question only when it is created by federal law, see *Am. Well Works Co.* v. *Layne & Bowler Co.*, 241 U.S. 257, 260 (1916), the Supreme Court has recognized that state law-created causes of action sometimes raise federal questions. Three factors must be satisfied for a state law cause of action to constitute a federal question: (1) the case necessarily raises a federal issue, (2) the federal issue is substantial and in actual dispute, and (3) the exercise of federal jurisdiction will not disturb "any congressionally approved balance of federal and state judicial responsibilities." See *Grable & Sons Metal Products, Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). The claims asserted against UBAE fit squarely into the *Grable* rule. Plaintiffs' common law causes of action necessarily raise a federal issue—the abrogation

However, even if the common law causes of action do not involve a federal question, the Court can still exercise jurisdiction under the "pendent personal jurisdiction" doctrine. Federal courts have the discretion to "exercise 'pendent personal jurisdiction' over [defendants] with respect to claims that arise out of a common nucleus of operative facts" with the federal question claims. See, *e.g.*, *IUE AFL-CIO Pension Fund* v. *Herrmann*, 9 F.3d 1049, 1056 (2d Cir. 1993) ("where a federal statute authorizes nationwide service of process, and the federal and state claims 'derive from a common nucleus of operative fact'" the district court may assert personal jurisdiction over the parties to the related state law claims even if personal jurisdiction is not otherwise available") (quoting *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725 (1966)); *Nikbin* v. *Islamic Republic of Iran*, 471 F Supp. 2d 53, 71 (D.D.C. 2007) (citing *Oetiker* v. *Jurid Werke, GmbH*, 556 F.2d 1, 4-5 (D.C. Cir. 1997)). Rule 4(k)(2) provides a statutory basis for jurisdiction over the claims here because the turnover action (1) arises under federal law, (2) UBAE is not subject to the general jurisdiction of any state's courts, and (3) exercising jurisdiction comports with due process (as analyzed in the February 28 Opinion and above). Fed. R. Civ. P 4(k)(2); see, *e.g.*, *Bank Brussels Lambert* v. *Credit Lyonnais (Suisse) S.A.*, 192 B.R. 73, 80 (S.D.N.Y. 1996) (applying pendent personal jurisdiction doctrine based on Rule 4(k)(2) ju-

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of federal sovereign immunity law under 22 U.S.C. § 8772 and TRIA. That issue is substantial and vigorously disputed by defendants. Finally, in enacting TRIA as an exception to the Foreign Sovereign Immunities Act, Congress expressed an intent that issues surrounding sovereign immunity be adjudicated in federal courts. The causes of action regarding the $250 million in bonds thus qualify as federal question causes of action sufficient to support Rule 4(k)(2) jurisdiction on their own.

risdiction). UBAE cannot evade personal jurisdiction on plaintiffs' common law causes of action.

UBAE thus presents no "manifest error" justifying reconsideration of the denial of its 12(b)(2) motion. Given the multiple alternative bases of personal jurisdiction over UBAE, the Court will not order jurisdictional discovery or a formal evidentiary hearing.

b. Factual Statements

Finally, UBAE argues that several statements in the February 28 Opinion could mistakenly imply a factual finding that the $250 Million Bonds were fraudulently transferred out of the United States in 2008. The Court does not see such a risk. The February 28 Opinion stated that the Court "does not resolve any merits issues as regards claims based on this alleged conveyance." *Peterson*, 2013 WL 1155576, at *28 n.14. The Court reiterates that statement here; none of the language in the February 28 Order constitutes a factual finding as regards the allegations of fraudulent conveyance, prima facie tort, or interference with collection of money judgment. At this point, plaintiffs have merely alleged such activity in the SAC; they must prove their common law claims by the preponderance of the evidence following discovery.

CONCLUSION

For the reasons set forth above, Clearstream's motion for reconsideration is DENIED. UBAE's motion for reconsideration is also DENIED. The Clerk of Court is directed to close the motions at ECF Nos. 360 and 365.

SO ORDERED.

Dated: New York, New York
May 20, 2013

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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10 CIV. 4518 (KBF)

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al.,
Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI a/k/a CENTRAL BANK OF IRAN, BANCA UBAE SPA, CITIBANK, N.A., and CLEARSTREAM BANKING, S.A.,
Defendants.

OPINION AND ORDER

FEBRUARY 28, 2013

KATHERINE B. FORREST, District Judge:

Before this Court are eighteen groups of judgment creditors, comprised of more than a thousand individuals, who seek assets of the Islamic Republic of Iran and related entities (collectively "Iran" unless stated otherwise).[1] Each group of victims or their estates has obtained judgments against Iran for injury or wrongful death arising from acts of terrorism Iran sponsored, led, or in which it participated. Together, plaintiffs have obtained billions of dollars in judgments against Iran, the vast majority of which remain unpaid. These judgments

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[1] The judgment creditor groups are defined as the plaintiffs in this action, as well as the third-party respondents named in defendant Citibank's interpleader petition. This includes the plaintiffs in the following actions: (1) *Peterson* v. *Islamic Republic of Iran* ("Peterson action"), No. 10 Civ. 4518(KBF) (S.D.N.Y.); (2) *Greenbaum et al.*

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v. *Islamic Republic of Iran, et al.* ("Greenbaum action"), 02 Civ. 2148(RCL) (D.D.C.); (3) *Acosta, et al.* v. *Islamic Republic of Iran, et al.* ("Acosta action"), 06 Civ. 745(RCL) (D.D.C.); (4) *Rubin, et al.* v. *Islamic Republic of Iran* ("Rubin action"), 01 Civ. 1655(RCL) (D.D.C.); (5) *Estate of Heiser et al.* v. *Islamic Republic of Iran et al.* ("Heiser action"), 00 Civ. 2329 and 01 Civ. 2104(RCL) (D.D.C.); (6) *Levin* v. *Islamic Republic of Iran* ("Levin action"), 05 Civ. 2494(GK) (D.D.C.); (7) *Valore, et al.* v. *Islamic Republic of Iran, et al.* ("Valore action"), 03 Civ.1959(RCL) (D.D.C.); (8) *Bonk, et al.* v. *Islamic Republic of Iran et al.* ("Bonk action"), 08 Civ. 1273(RCL) (D.D.C.); (9) *Estate of James Silvia, et al.* ("Silvia action"), 06 Civ. 750(RCL) (D.D.C.); (10) *Estate of Anthony K. Brown, et al.* v. *Islamic Republic of Iran, et al.* ("Brown action"), 08 Civ. 531(RCL) (D.D.C.); (11) *Estate of Stephen B. Bland* v. *Islamic Republic of Iran, et al.*, ("Bland action"), 05 Civ. 2124(RCL) (D.D.C.); (12) *Judith Abasi Mwila, et al.* v. *Islamic Republic of Iran, et al.* ("Mwila action"), 08 Civ. 1377(JDB) (D.D.C.); (13) *James Owens, et al.* v. *Republic of Sudan, et al.* ("Owens action"), 01 Civ. 2244(JDB) (D.D.C.); (14) *Rizwan Khaliq, et al.* v. *Republic of Sudan, et al.* ("Khaliq action"), 08 Civ. 1273(JDB) (D.D.C.). By orders dated June 27, 2011 (ECF No. 22) and July 28, 2011 (ECF No. 32), these judgment creditors were added to the consolidated action 10 Civ. 4518. In June 2012, four additional actions by way of supplemental third-party respondents to the Citibank Interpleader were added: (15) *Beer et al.* v. *Islamic Republic of Iran et al.* ("Beer action"), 08 Civ. 1807(RCL) (D.D.C.); (16) *Kirschenbaum et al.* v. *Islamic Republic of Iran et al.* ("Kirschenbaum action"), 03 Civ. 1708(RCL) (D.D.C.); (17) *Arnold et al.* v. *Islamic Republic of Iran et al.* ("Arnold action"), 06 Civ. 516(RCL) (D.D.C.), and (18) *Murphy et al.* v. *Islamic Republic of Iran et al.* ("Murphy action"), 06 Civ. 596(RCL) (D.D.C.). While these actions came to this Court originally in different procedural postures, they are all seeking collection of judgments with regard to the same assets as set forth herein, and are treated by the Court for ease of reference as "plaintiffs" herein.

were—long ago—duly registered in this district. As amongst themselves, plaintiffs have informed the Court that they have reached agreement as to the priority and manner of distribution of any recovery. (See Tr. of Nov. 27, 2012, Status Conf. at 15:19–22, ECF No. 293.)

Each group of plaintiffs seeks turnover of assets currently held at Citibank, N.A. ("Citibank"), as part of efforts to satisfy these outstanding judgments. (Second Am. Compl., ECF No. 160.) Citibank is a stakeholder without interest in the ultimate outcome of this dispute. (Third Party Pet. in Nature of Interpleader ("Citibank Interpleader"), ECF No. 38.) Its interest is in resolution of ownership of funds held in the account so that it may, if and when requested, ensure that the funds are appropriately disbursed. (See Letter of Sharon L. Schneier to the Hon. Katherine B. Forrest, Dec. 14, 2012, ECF No. 300 (noting "Citibank is a neutral stakeholder in this proceeding")).

These actions have been litigated in fits and starts; some of the delays are certainly attributable to the fact that established procedures for obtaining writs of attachment, restraining funds and executing judgments thereon are not well suited to large, complex actions such as this. For instance, for a number of years many of the actions were categorized as "miscellaneous" and were not assigned to any particular judge. Additionally, litigation against any sovereign inserts legal complexities. Finally, the basic fact that billions of dollars are at stake virtually insures vigorous litigation. And without a doubt these actions have been vigorously litigated. All matters as to each of the eighteen creditor groups have been collected together and proceeded before this Court since December 10, 2012.

Defendants do not dispute the validity of plaintiffs' judgments. They do, however, dispute that the assets held at Citibank are subject to turnover, and that this Court has jurisdiction over those assets or over certain defendants. Defendants Bank Markazi, UBAE and Clearstream have also raised issues of state, federal (including a number of constitutional arguments), and international law to oppose turnover.

Currently before this Court are five groups of motions:

First, defendants UBAE S.p.A. ("UBAE") and Clearstream Banking S.A. ("Clearstream") have separately moved to dismiss the claims against them for lack of personal jurisdiction. (ECF Nos. 295, 299, 301.) Plaintiffs have opposed these motions. (ECF Nos. 302, 306, 313, 323, 324.)

Second, Bank Markazi has moved to dismiss the claims against it for lack of subject matter jurisdiction. (ECF No. 205.) Plaintiffs have opposed that motion. (ECF No. 219.)

Third, defendant Clearstream has renewed its earlier motion to vacate restraints. (ECF No. 174.) Plaintiffs oppose this motion. (ECF No. 199.)

Fourth, all plaintiffs have moved (or joined in the motion) for partial summary judgment for turnover of the assets held at Citibank. (ECF Nos. 209, 307.) Defendants Bank Markazi, UBAE, and Clearstream oppose this motion; defendant Citibank takes no position beyond its reliance on the arguments raised by the other parties. (ECF Nos. 261, 282, 284, 286, 300, 328.)

Fifth, the Bland judgment creditors have moved to authorize execution and/or attachment against assets of Iran. (ECF No. 305.)

Altogether, these motions and supporting materials consume several thousands of pages. For the reasons set forth below, this Court denies each of the defendants' motions, grants plaintiffs' motion for partial summary judgment and turnover and grants the Bland plaintiffs' motion to execute.

I. FACTUAL BACKGROUND

The following facts are undisputed unless otherwise noted. Bank Markazi is the Central Bank of Iran, an agency of the Iranian Government. By 2008, Bank Markazi had over $2 billion in bonds (the "Markazi Bonds") denominated in U.S. dollars held in an account with defendant Clearstream S.A. Those bonds have subsequently been split into two groups relevant to this action: first, $1.75 billion in cash proceeds of the bonds are held in an account at Citigroup in New York; these proceeds are subject to restraints imposed by the Court, by Executive Order, and by statute. The proceeds are the subject of, *inter alia*, plaintiffs' motion for partial summary judgment and turnover and Clearstream's motion to vacate the restraints. The second group consists of two securities—with a face value of $250 million—that were originally part of the Markazi Bonds. Following a June 2008 evidentiary hearing in which Judge Koeltl lifted the restraints as to those two securities, they were sold on the open market. The $250 million are relevant to several of plaintiffs' claims, but are not addressed by the pending turnover motion or the motion to vacate the restraints.

Prior to maturity, each Markazi Bond (from both groups) had been issued in physical form and was registered with either the Federal Reserve Bank of New York ("FRBNY") or the Depository Trust Company ("DTC"), also located in New York. Accordingly, prior to maturity, the FRBNY and the DTC were the custodians of the Markazi Bonds.

For a period of years, Bank Markazi maintained an account with Clearstream S.A. which, in turn, maintained a correspondent account on its behalf at Citibank to handle funds associated with the bonds, including interest and principal payments.

Clearstream Luxembourg is an "international service provider for the financial industry offering securities settlement and custody-safekeeping services." (See Clearstream Consolidated Mem. of L. in Support of its Renewed Mot. to Vacate Restraints at 1.) "Clearstream serves as an intermediary between financial institutions worldwide to ensure that transactions from one bank to another are efficiently and successfully completed." (*Id.* at 1–2.) "As a post trade services provider currently covering the international and 52 domestic markets, Clearstream has over 2,500 financial institutions from all over the world among its customer base ." (*Id.* at 2.)

One of Clearstream's offices is in New York City. At all times relevant to these motions, the office that Clearstream maintained in New York engaged in sales, marketing and administrative activities relating to Clearstream's international financial services business. The New York office employed New York-based staff. Those New York employees had access to facilities supportive of sales and marketing efforts such as office space, telephones, email access and addresses and fax lines. Clearstream paid its New York staff out of bank accounts maintained in New York. Since 2002, Clearstream has been registered with New York State to maintain a representative office and conduct certain activities in New York. There is no evidence in the record that Clearstream's New York office was a depository institution.

Nor is there evidence in the record that Clearstream's Luxembourg office attempted to maintain any corporate separation from its New York office. Indeed, based on Clearstream's submissions in this matter, its New York office was intended to act as a sales and marketing arm for its Luxembourg operations. Clearstream Luxembourg used its New York office to seek additional business for its Luxembourg-based financial organization and also used it to ensure seamless service to clients by maintaining points of contact in New York.

Over the years, Citibank has maintained an account in New York for Clearstream, to which the proceeds of the Markazi Bonds were posted. The parties dispute the extent to which Clearstream's New York office was involved in activities relating to the account it maintained at Citibank in New York on behalf, first, of Bank Markazi and later on behalf of defendant UBAE—in connection with services provided with respect to the Markazi Bonds. However, as set forth below, the resolution of that factual dispute is unnecessary to resolution of the instant motions.

From time to time, interest was paid on the bonds and posted to Clearstream's account at Citibank. As the bonds matured, the proceeds were credited to that same account.

In 2008, UBAE, a bank located in Italy, opened a new account with Clearstream, its second such account.[2] The record evidence supports UBAE's position that this account was opened at Clearstream's Luxembourg office. Following the opening of that account, Clearstream recorded a transfer of the entirety of the Markazi Bonds from Bank Markazi to UBAE—plaintiffs point to evidence that this transfer was marked "free of payment".

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[2] Plaintiffs urge that the timing of UBAE's actions with respect to opening its account with Clearstream and engagement in various transactions with Bank Markazi demonstrate that Bank Markazi was engaged in efforts to avoid the very turnover now at issue. In resolving these motions, this Court need not and does not refer to that timeline, or any inferences which a finder of fact might draw thereon.

According to UBAE, in 2008, Bank Markazi asked that UBAE close and sell two securities—with a face value of $250 million[8]—held in the new UBAE custodial account located at Clearstream Luxembourg. (Reply Decl. of Biagio Matranga to Pls.' Opp. to Def. UBAE's Mot. to Dismiss ("Matranga Reply Decl.") ¶ 7, ECF No. 308.) UBAE negotiated a selling price and offered to buy the securities from Bank Markazi at a price slightly lower than the negotiated selling price, the difference representing its fee for the transaction. (*Id.* ¶ 8.) The sale to the third party customers occurred in Luxembourg and customers of Clearstream Luxembourg purchased both securities. (*Id.* ¶¶ 9–10.) UBAE concedes that this sale was performed at the request of and for the benefit of Bank Markazi. (*Id.* ¶ 13.)

Plaintiffs allege that, despite any allegations that the sale of the $250 million in Markazi Bonds occurred in Luxembourg, the defendants arranged for the transfer of the dollar-denominated bond proceeds from the Citibank account in New York to UBAE. (SAC ¶ 98.) Clearstream allegedly instructed Citibank to transfer the cash proceeds of the $250 million from the holding account to Clearstream's cash account. (*Id.*) Next, Clearstream instructed Citibank to make an electronic funds transfer ("EFT") of the cash from Citibank to UBAE's correspondent bank in New York, HSBC. (*Id.* ¶¶ 100, 214.) Finally, UBAE, acting on behalf of Bank Markazi, then wired the cash from HSBC to UBAE in Italy.

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[8] The bonds associated with these transactions were those as to which Judge Koeltl had lifted the restraints following the evidentiary proceeding held in June 2008. One of plaintiffs' claims for fraudulent conveyance relate to the proceeds from those bonds.

After the sale of the $250 million, over $1.75 billion in proceeds [of] the Markazi Bonds thus remain in the UBAE / Clearstream account currently at Citibank in New York. On a number of occasions, Bank Markazi has stated that it owns the Markazi Bonds and all proceeds associated with them (now held in the Citibank account). It has stated that "Over $1.75 billion in securities belonging to Bank Markazi are frozen in a custodial Omnibus Account at [Citibank]"; that the "Restrained Securities are the property of Bank Markazi, the Central Bank of Iran", that the "aggregate value of the remaining bond instruments, *i.e.* the Restrained Securities that are the property of Bank Markazi and the subject of the Turnover Action—is thus $1.753 billion"; that the "Restrained Securities are the property of a Foreign Central Bank "; that the "Restrained Securities are presumed to be the property of Bank Markazi"; and "the Restrained Securities are prima facie the property of a third party, Bank Markazi " (See Bank Markazi's First Mem. of L. in Support of its Mot. to Dismiss the Am. Compl. ("Markazi's First MOL") at 1, 5, 9, 10, 36, ECF No. 18.) In addition, two officers of Bank Markazi have sworn under penalty of perjury that the Blocked Assets are the "sole property of Bank Markazi and held for its own account." (Aff. of Gholamossein Arabieh ¶ 2, Decl. of Liviu Vogel in Support of Pls.' Mot. for Partial Summ. Judgment ("Vogel Decl."), Ex. J, Oct. 17, 2010, ECF No. 210; Aff. of Ali Asghar Massoumi ¶ 2, Vogel Decl. Ex. K, Oct. 17, 2010, ECF No. 210). UBAE has similarly asserted that it does not have a "legally cognizable interest in the restrained bonds." (See UBAE

Mem. of L. in Opp. to Pls.' Mot. for Summ. J. ("UBAE S.J. Opp. Br.") at 2, ECF No. 328.)

All initial transactions relating to payment of interest and principal for the Markazi Bonds have occurred in New York. Clearstream's Citibank account has been credited with any such payments. Prior to the 2008 "free of payment" transfer, Clearstream's procedure was then to credit Bank Markazi's Clearstream account with the appropriate amounts; following the transfer, Clearstream has credited such amounts to UBAE. UBAE concedes that it has paid interest to Bank Markazi related to the bonds; such interest payments were credited to Bank Markazi's account with UBAE in Rome. (See Decl. of Biagio Matranga ("Matranga Decl.") ¶ 15, ECF No. 95.) UBAE maintained its correspondent account at HSBC in New York until at least some time in 2009. (*Id.* ¶ 5.)

UBAE acknowledges that at the close of each day, and sometimes more than once a day, its treasurer (located in Italy) arranges for electronic transfers of the balance of any of its proprietary international U.S. Dollar accounts to its U.S. Dollar correspondent account at HSBC in New York, where they are pooled and may be transferred to Italy. (See *id.*)

In 2012, the last of the Markazi Bonds matured. Clearstream's account at Citibank currently consists of cash associated with the bonds.[4]

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[4] The cash held in Clearstream's Citibank account is herein referred to as the "Blocked Assets." The terms "blocked" and "restrained" have particular legal importance. As discussed, *infra*, the Blocked Assets have been "blocked" pursuant to statute. The Blocked Assets were "restrained" pursuant to statute and by the writs of attachment previously obtained by the plaintiffs herein.

UBAE sold the bonds and Clearstream, on behalf of UBAE, instructed Citibank New York to transfer the cash proceeds of the sale from Citibank New York to Clearstream's account at Citibank New York. As with the $250 million sale, when UBAE requested a withdrawal, Clearstream instructed Citibank to make an EFT through Clearstream's correspondent bank, JP Morgan Chase in New York, to UBAE's correspondent bank in New York, HSBC.

On June 12, 2008, this Court issued a writ of execution as to the Blocked Assets. (ECF No. 84.) This writ was levied upon Citibank as of June 13, 2008. The legal effect of levying this writ upon the Markazi Bonds and associated bank accounts was to restrain those assets. On October 17, 2008, this Court issued a second writ of execution, this time against Clearstream Banking S.A. (ECF No. 118.) Plaintiffs served Citibank and Clearstream Banking S.A. with Restraining Notices and Amended Restraining Notices later in June 2008. On June 27, 2008, this Court ordered that the Markazi Bonds and associated accounts (all encompassed within the category of "Blocked Assets") remain restrained until further order. (ECF No. 103.) Various extensions of the original restraints were issued by this Court in June 2009, May and June 2010. (ECF No. 171; Vogel Decl. Ex. G, Order Extending Levy, 18 Misc. 302(BSJ) (S.D.N.Y. May 10, 2010), ECF No. 210; *Id.* Ex. H, Order Extending Levy, 18 Misc. 302(BSJ) (S.D.N.Y. June 11, 2010).)

On June 8, 2010, following two years of legal activity in the Southern District of New York relating to the Blocked Assets (including registering judgments, obtaining restraining orders, and issuing writs of attachment, see generally Vogel Decl. Exs. B, C, D, U), the Peterson plaintiffs filed the original complaint which commenced this action, seeking, *inter alia*, turnover of the Blocked Assets. This had the legal effect of continuing the restraints on those assets pursuant to N.Y. C.P.L.R. § 5232(a), until transfer or payment in the amount of the Blocked Assets is made.

The First Amended Complaint was filed on October 20, 2010 (ECF No. 3), and the Second Amended Complaint ("SAC"), the operative complaint in this matter, was filed on December 7, 2011. (ECF No. 160.) The SAC asserts eight causes of action including (1) a declaration that Bank Markazi is an agent and/or alter ego of Iran, the Restrained Bonds are beneficially owned by Iran and are subject to execution for enforcement of Plaintiffs' judgments, and that the Restrained Bonds are not covered by 28 U.S.C. § 1611(b)(1); (2),(3) rescission of allegedly fraudulent conveyances by Iran, Bank Markazi, and Clearstream under New York Debtor and Creditor Law §§ 276(a) and 273-a; (4),(5) turnover of the Markazi Bonds under N.Y. C.P.L.R. §§ 5225 and 5227; (6) equitable relief against all defendants; (7) tortious interference with collection of money judgment, and (8) prima facie tort against UBAE and Clearstream.

On February 5, 2012, President Obama issued Exec. Order No. 13,599 ("E.O. 13599"), 77 Fed. Reg. 6659. E.O. 13599 declared that "[a]ll property and interests" in property of Iran and held in the United States, were "blocked" under his authority pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701.

E.O. 13599 had the effect of turning any restrained assets owned by the Iranian government (or any agency or instrumentality thereof) into "Blocked Assets" As Bank Markazi is the Central Bank of Iran, any of its assets located in the United States as of February 5, 2012, became "Blocked Assets" pursuant to E.O. 13599.

Citibank complied with its obligations under E.O. 13599 by reporting the Clearstream account proceeds to the Office of Foreign Assets Control ("OFAC") and placing proceeds relating to the Markazi Bonds into a segregated interest bearing account (this has been referred to from time to time as the "omnibus" account). That account is maintained in the Southern District of New York. As of April 2012, the Blocked Assets in that Citibank account now consist solely of cash.

II. LAW RELEVANT TO ALL MOTIONS

A. The Foreign Sovereign Immunities Act

Generally, U.S. law provides that a foreign sovereign is entitled to immunity from legal action in the United States. See Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602–1611.

The FSIA codifies "the restrictive theory of sovereign immunity." *Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983). The Supreme Court found that when Congress enacted the FSIA, it intended to ensure that "duly created instrumentalities of a foreign state are to be accorded a presumption of independent status." See *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba* ("*Bancec*"), 462 U.S. 611, 627 (1983). The "presumption of independent status" is not to be "lightly overcome." *Hercaire Int'l, Inc.* v. *Argentina*, 821 F.2d 559, 565 (11th Cir. 1987). Such "instrumentalities" include a foreign state's "political subdivisions and agencies or instrumentalities," as set forth in the statute. See *Hester Int'l Corp.* v. *Federal Republic of Nigeria*, 879 F.2d 170, 176 n.5 (5th Cir. 1989) (emphasis added).

The property of a sovereign's central bank is immune from attachment under certain circumstances, including if the property is that of a central bank held for its own account. 28 U.S.C. § 1611(b)(1).

The FSIA does, however, provide exceptions to immunity in connection with legal proceedings seeking attachment to fulfill a judgment:

> (b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States if—
>
>> (2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3) or (5) or 1605(b), or 1605A of this chapter

28 U.S.C. § 1610 (emphasis added).

Section 1605A, the "Terrorism Exception to the Jurisdictional Immunity of a Foreign State", provides:

> (a) In general—
>
>> (1) No immunity—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources

> is engaged in by an official, employee, or agent of such foreign state

28 U.S.C. § 1605A.

According to § 1603 of the FSIA, a "foreign state" includes "a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b)." 28 U.S.C. § 1603(a). Subsection (b) provides:

> (b) An 'agency or instrumentality of a foreign state' means any entity—
>
> (1) which is a separate legal person, corporate or otherwise, and
>
> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
>
> (3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

28 U.S.C. § 1603(b).

Thus, in order to pierce through the FSIA, including its provision for central bank immunity, the Court must undertake various analyses. The first question is whether the assets at issue are in fact "Iranian" and the judgments in compensation for acts of terrorism. This analysis complies with 28 U.S.C. §§ 1603, 1605A, and 1610. Next, for central bank assets, specifically, the Second Circuit has adopted a functional test that asks whether those assets are used for central bank functions as normally understood, irrespective of their commercial nature. See *NML Capital, Ltd.* v. *Banco Central de la Republica Argentina*, 652 F.3d 172, 194 (2d Cir. 2011). Under *NML*, if the property at issue is that of a central bank, to execute against such property, a plaintiff must demonstrate "with specificity that the funds are not being used for central banking functions as such functions are normally understood." *Id.* at 194. However, other statutes (as discussed below) provide for alternative ways to reach such assets.

B. TRIA

The Terrorism Risk Insurance Act of 2002 ("TRIA"), codified in a note to the FSIA, allows a plaintiff to execute against "blocked" assets of a terrorist party. TRIA states, in relevant part:

> Notwithstanding any other provision of law in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28 United States Code, the blocked assets of that terrorist party shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a), Pub. L. No. 107-297, Title II, 116 Stat. 2337 (2002) (emphasis added).

TRIA defines the term "terrorist party" as "a terrorist, terrorist organization , or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371)." TRIA § 201(d)(4). Iran has been designated as a "state sponsor of terrorism" under section 6(j) of the Export Administration Act of 1979 since

January 19, 1984. State Sponsors of Terrorism, U.S. Dep't of State, at http://www.state.gov/j/ct/c14151.htm (last visited July 27, 2012). TRIA's broad language—"notwithstanding any other provision of law . in every case"—provides one basis pursuant to which a separate "central bank" analysis becomes unnecessary; TRIA trumps the central bank provision in 28 U.S.C. § 1611(b)(2).

C. The IEEPA and E.O. 13599

In 1977, Congress enacted the International Emergency Economic Powers Act ("IEEPA"). 50 U.S.C. §§ 1701, 1702. The IEEPA authorizes the president to take broad-ranging action against the financial assets and transactions of those entities he determines pose an "unusual and extraordinary threat" to the national security of the United States. *Id.* On February 6, 2012, pursuant to his authority under IEEPA, President Obama issued Executive Order ("E.O.") 13599. E.O. 13599 provides that:

> [a]ll property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that are or hereafter come within the United States, or that hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Exec. Order No. 13,599, 77 Fed. Reg. 26 (Feb. 6, 2012) (emphasis added). For purposes of E.O. 13599, the "Government of Iran" is "any political subdivision, agency or instrumentality thereof, and any [individual or entity] owned or controlled by, or acting for or on behalf of, the Government of Iran." *Id.* That definition is similar to the definition promulgated by the Department of Treasury:

> (a) The state and the Government of Iran, as well as any political subdivision, agency or instrumentality thereof; (b) Any entity owned or controlled directly or indirectly by the foregoing; (c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the applicable effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing.

31 C.F.R. § 560.304.

Thus, as a matter of law, Bank Markazi's (indisputably the Central Bank of Iran) assets were "blocked" on February 6, 2012. "Blocking" Bank Markazi's assets located in the U.S.—and, here, in the Southern District of New York—has the effect of restraining them and prevents any transfer or dealing in those assets. The writs of attachment previously obtained had already restrained Bank Markazi's assets held at Citibank. However, to the extent UBAE asserts it has any control relating to those assets, it (as discussed below) simply fits within E.O. 13599's provision for a person acting "directly or indirectly" on behalf of Iran.

The Office of Foreign Assets Control ("OFAC"), operating under the United States Department of Treasury, has determined that "E.O. 13599 requires U.S. persons to block all property and interests in property of the Government of Iran, unless otherwise exempt under OFAC." Frequently Asked Questions and Answers, U.S. Dep't of Treasury (hereinafter "OFAC FAQs"), available at http://www.treasury.gov/resource-center/faqs/Sanctions-/Pages/answer.aspx (last visited July 25, 2012); see also 31 C.F.R. § 501.603(a)(1) ("Any person holding property blocked pursuant to this chapter must report."). According to the OFAC "Fact Sheet", "[a]mong other things, the E.O. [13599] freezes all property of the Central Bank of Iran and all other Iranian financial institutions, as well as all property of the Government of Iran " See OFAC Regulations for the Financial Community, Dep't of the Treasury § V(A) (Jan. 24, 2012); Fact Sheet: Implementation of National Defense Authorization Act Sanctions on Iran, U.S. Dep't of Treasury, available at http://www.treasury.gov/press-center/press-releases/Pages/tg1409.aspx (last visited July 25, 2012).

OFAC periodically publishes a list of "Specially Designated Nationals and Blocked Persons" (the "SDN list"). The SDN list aids the Court to determine which entities are known to be blocked. That list, however, purports to be neither exhaustive nor exclusive. It cannot be used as a sole reference point in connection with a determination as to whether a particular entity's assets are in fact "blocked" pursuant to E.O. 13599. In general, and therefore left to judicial determination, "E.O. 13599 blocks the property and interests in property of any individual or entity that comes within its definition of the term 'Government of Iran' regardless of whether it is listed on the SDN List " OFAC FAQs. The Government of Iran and Bank Markazi are on the SDN list. Clearstream and UBAE are not.

The SDN list is updated when individuals, entities or the Treasury report assets owned by Iran. According to OFAC, "E.O. 13599 requires U.S. persons to block all property and interests in property of the Government of Iran, unless otherwise exempt under OFAC." See 31 C.F.R. § 501.603(a)(1) ("Any person holding property blocked pursuant to this chapter must report.") In connection with its OFAC reporting obligations, in February

2012—four years after the "free of payment" transfer of the bonds to UBAE—Citibank reported to the U.S. Treasury the account it maintained for Clearstream in connection with the Bank Markazi Bonds.

D. The Newest Act: 22 U.S.C. § 8772

On August 10, 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "2012 Act") went into effect. 22 U.S.C. § 8701, *et seq.* The 2012 Act does not eliminate any of the authority and bases for blocking or executing against certain assets as set forth under the FSIA or TRIA. It does, however, provide a separate and additional basis for execution on assets in aid of fulfilling judgment. Section 502 of the 2012 Act (22 U.S.C. § 8772) states:

> (a) Interests in blocked assets
>
> (1) In general
>
> Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity and preempting any inconsistent provision of State law, a financial asset that is—
>
> (A) held in the United States for a foreign securities intermediary doing business in the United States;
>
> (B) a blocked asset (whether or not subsequently unblocked) that is the property described in subsection (b); and
>
> (C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities inter-

mediary or a related intermediary holds abroad,

shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death

(2) Court determination required

In order to ensure that Iran is held accountable for paying the judgments described in paragraph (1) and in furtherance of the broader goals of this Act to sanction Iran, prior to an award turning over any asset the court shall determine whether Iran holds equitable title to, or beneficial interest in, the assets described in subsection (b) and that no other person possesses a constitutionally protected interest in the assets described in subsection (b) under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds—

(A) equitable title to, or a beneficial interest in, the assets described in subsection (b) . ; or

(B) a constitutionally protected interest in the assets described in subsection (b),

such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein .

(b) Financial assets described

The financial assets described in this section are the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in *Pe-*

> *terson, et al.* v. *Islamic Republic of Iran, et al.*. . that were restrained by restraining notices and levies secured by plaintiffs in those proceedings .
>
> . . .
>
> (3) Financial asset; securities intermediary
>
> .
>
> The term "Iran" means the Government of Iran, including the central bank or monetary authority of that Government and any agency or instrumentality of that Government.

22 U.S.C. § 8772 (emphases added).

As the statute relates specifically to the instant action, its interpretation is a matter of first impression.

On its face, the statute sweeps away the FSIA provision setting forth a central bank immunity, 28 U.S.C. § 1611(b)(1); it also eliminates any other federal or state law impediments that might otherwise exist, so long as the appropriate judicial determination is made. 22 U.S.C. § 8772(a)(2). If UBAE is merely an agent acting directly or indirectly on behalf of Iran, then the 2012 Act provides that assets it holds for Iran are subject to execution if its requirements are met; the 2012 Act therefore provides a separate basis—in addition to the FSIA and TRIA—for execution.

III. DEFENDANTS' MOTIONS TO DISMISS

Each defendant—Clearstream, UBAE, and Bank Markazi—has filed a separate motion to dismiss.

A. UBAE and Clearstream Motions to Dismiss

Clearstream and UBAE have moved pursuant to Fed. R. Civ. P. 12(b)(2) to dismiss all claims against them for lack of personal jurisdiction. It is undisputed that each is a nonresident defendant. Both Clearstream and UBAE argue that they are based in Europe and have no presence in New York.

i. Standard of Review for Personal Jurisdiction

Plaintiffs bear the burden to establish personal jurisdiction as to each defendant. See *MacDermid Inc.*, v. *Deiter*, 702 F.3d 725, 727–28 (2d Cir. 2012) (citing *Seetransport Wiking Trader Schiffarhtsgellschaft MBH & Co., Kommanditgesellschaft* v. *Navimpex Centrala Navala*, 989 F.2d 572, 580 (2d Cir. 1993)). Jurisdiction is measured at the time that plaintiffs filed suit. (See Banca UBAE Mem. of L. in Suppt. of Mot. to Dismiss ("UBAE MTD Br.") at 3.) See *Klinghoffer* v. *S.N.C. Achille Lauro*, 937 F.2d 44, 52 (2d Cir. 1991). Prior to trial, when a motion to dismiss for lack of personal jurisdiction is based on affidavits and other written materials, a plaintiff need only make a prima facie showing. See *MacDermid*, 703 F.3d at 727. The Court is required to accept the allegations in the complaint as true so long as they are uncontroverted by defendant's affidavits. *Id.*

In order for this Court to exercise personal jurisdiction, such jurisdiction must have a statutory basis and comport with the due process clause of the Fifth Amendment. See Fed. R. Civ. P. 4(k); *Chloe* v. *Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163–65 (2d Cir. 2010); *Grand Rivers Enters. Six Nations, Ltd.* v. *Pryor*, 425 F.3d 158, 165 (2d Cir. 2005).

ii. Discussion

Plaintiffs argue that Fed. R. Civ. P 4(k)(1)(A)—which permits this Court to exercise personal jurisdiction to the extent of the applicable New York statutes—provides the basis for personal jurisdiction. The Court agrees with that assessment, but finds two additional bases on which personal jurisdiction is proper: first, general jurisdiction exists over Clearstream under Rule 4(k)(1)(A). Second, even if jurisdiction is not proper under the New York long arm statute, Fed. R. Civ. P. 4(k)(2) provides an alternative basis for personal jurisdiction as to UBAE.

As to Rule 4(k)(1)(A)—the sole basis of jurisdiction asserted by plaintiffs—this Court must determine whether either general or specific personal jurisdiction exists under the relevant New York statutes.

a. General Jurisdiction under C.P.L.R. § 301

Under N.Y. C.P.L.R. § 301, "general jurisdiction is established if the defendant is shown to have 'engaged in continuous, permanent, and substantial activity in New York.'" See, *e.g.*, *United Mobile Technologies, LLC* v. *Pegaso PCS, S.A. de C.V.*, 11–2813–CV, 2013 WL 335965 (2d Cir. Jan. 30, 2013). For general jurisdiction over a foreign corporation, this requires a showing that the corporation is "doing business" in New York, "not occasionally or casually, but with a fair measure of permanence and continuity." See, *e.g.*, *Gallelli* v. *Crown Imports, LLC*, 701 F Supp. 2d 263, 271 (E.D.N.Y. 2010) (quoting *Hoffritz for Cutlery, Inc.* v. *Amajac, Ltd.*, 763 F.2d 55, 58 (2d Cir. 1985)). The claim over which plaintiffs seek to assert personal jurisdiction over the defendants need not relate to the activity that gives rise to general jurisdiction. See *Hoffritz for Cutlery*, 763 F.2d at 58.

To determine whether a corporate defendant is "doing business" in New York, courts look [to] factors such as "the existence of an office in New York; the solicitation of business in the state; the presence of bank accounts and other property in the state; and the presence of employees of the foreign defendant in the state." See *id.*

b. Specific Jurisdiction under C.P.L.R. § 302(a)(1)

Even in the absence of the systematic presence needed for “doing business” jurisdiction, a plaintiff may properly assert specific jurisdiction based on its “transacting business” in New York—*i.e.*, where a defendant, itself “‘or through an agent transacts any business within the state, so long as the plaintiff's ‘cause of action aris[es] from’ that ‘transact[ion].’” See *Licci ex rel. Licci* v. *Lebanese Canadian Bank, SAL* (hereinafter “*Licci I*”), 673 F.3d 50, 60 (2d Cir. 2012); *Best Van Lines, Inc.* v. *Walker*, 490 F.3d 239, 240 (2d Cir. 2007).

To establish that an entity or its agent has transacted business within New York, a plaintiff must demonstrate a defendant's purposeful availment of the privilege of conducting business in New York. *Licci*, 673 F.3d at 61. The central inquiry relates to the “quality” of a defendant's contacts with New York—*i.e.*, whether the contacts indicate an intent to invoke the benefits and privileges of New York law. *Id.*; see also *Deutsche Bank Sec., Inc.* v. *Montana Bd. of Invs.*, 7 N.Y.3d 65, 72 (2006); see also *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985).

It is perhaps counterintuitive—but nonetheless well-established—that for purposes of establishing that a defendant has “transacted business” within New York, the defendant or its agent need not have physically entered New York; the question is whether the defendant or its agent engaged in purposeful activities in New York. See *Best Van Lines*, 490 F.3d at 249.

Purposeful availment is thus a fact-based inquiry: a single telephone call to place a single order in New York that would be sent to another state or the transitory presence of a corporate official may not be sufficient under certain circumstances. *Licci I*, 673 F.3d at 62. Yet, in another case, *Deutsche Bank*, the Court found that a sophisticated investor who may use electronic devices to "enter" New York to conclude a substantial transaction, met the "transacting business" requirement. 7 N.Y.3d at 72.

A court is thus required to look at the totality of the circumstances. See *Licci I*, 673 F.3d at 62. Instructive in this regard—especially for this case—is the Second Circuit's recent opinion in *Licci I*. In *Licci I*, the Second Circuit certified to the New York Court of Appeals the question of whether a defendant's maintenance and frequent use of a correspondent bank in New York (to effect international wire transfers) met the requirements of the New York long-arm statute. *Id.* at 66. The New York Court of Appeals found that, under the circumstances there presented, it did.

In certifying the question, the Second Circuit examined cases in which personal jurisdiction was based on the use of a correspondent bank. It found that in some instances the mere presence of having a correspondent bank account might be insufficient to confer jurisdiction, *id.* at 63–64, yet in others the use of a correspondent bank account might be sufficient. *Id.*

For instance, in *Amigo Foods Corp.* v. *Marine Midland Bank–N.Y.*, 39 N.Y.2d 391, 394 (1976), an out-of-state bank passed letters of credit through a correspondent New York bank. While the Appellate Division initially dismissed such use as insufficient to meet the requirements of New York's long-arm statute, the Court of Appeals reversed and remanded for jurisdictional discovery. *Id.* at 396. The Court of Appeals agreed that the mere presence of a correspondent bank in New York was not in and of itself sufficient to confer jurisdiction, but it allowed discovery as to whether there were other facts indicating sufficient use of the correspondent bank account to do so. *Id.*

In a later case, the Court of Appeals found that use of a correspondent bank in connection with securities transactions was sufficient to meet the requirements of C.P.L.R. § 302(a). See *Ehrlich-Bober & Co.* v. *Univ. of Houston*, 49 N.Y.2d 574, 577, 580–82 (1980).

Similarly, the Court of Appeals upheld the exercise of personal jurisdiction over a Russian bank that maintained and used a correspondent bank account through which it engaged in currency-exchange options transactions with the plaintiff. See *Indosuez International Finance B.V.* v. *National Reserve Bank*, 98 N.Y.2d 238, 247 (2002).

In addition, the Second Circuit noted in *Banco Ambrosiano* v. *Artoc Bank & Trust*, 62 N.Y.2d 65, 72 (1984) that the use of the correspondent account to effect the transactions at issue in the lawsuit was sufficient to meet the requirements of due process for quasi-in rem jurisdiction. *Licci I*, 673 F.3d at 64. (The holding in that case was based on considerations of due process; the Second Circuit found it nonetheless relevant insofar as statutory and constitutional inquiries in New York have become entangled. *Id.* at 64 (quoting from *Best Van Lines*, 490 F.3d at 242.))

Resolving any ambiguities in these cases, the Court of Appeals answered the Second Circuit's certified question in the affirmative; a defendant's maintenance and frequent use of a New York correspondent account can be sufficient for "transacting business" jurisdiction under C.P.L.R. § 302(a). See *Licci* v. *Lebanese Canadian Bank, SAL* (hereinafter "*Licci II*"), 2012 WL 5844997 (N.Y. Nov. 20, 2012).

The facts of *Licci II* bear certain similarities to those before this Court such that they bear reciting in some detail. There, plaintiffs were several dozen American, Canadian and Israeli citizens who were injured or whose family members were injured or killed in rocket attacks allegedly launched by Hizballah in 2006. *Id.*, at *1. Hizballah had been declared a terrorist organization by the United States Department of State. *Id.* Plaintiffs commenced a lawsuit in the Southern District of New York against the Lebanese Canadian Bank, SAL ("LCB"), alleging that LCB had assisted Hizballah in its terrorist acts by facilitating certain financial transactions. LCB did not operate branches or offices, or maintain employees in New York. Its sole "point of contact with the United States was a correspondent bank account with AmEx in New York." *Id.*, at *2. The complaint alleged that LCB used the correspondent bank account to transfer funds that enabled, *inter alia*, the attacks which killed or injured plaintiffs or their relatives. *Id.*

In its analysis, the Court of Appeals acknowledged the fact-specific nature of an inquiry as to whether personal jurisdiction can be based on maintenance and use of a correspondent bank. *Id.*, at *3. Ultimately the Court found that "complaints alleging a foreign bank's repeated use of a correspondent account in New York on behalf of a client—in effect, a 'course of dealing' show purposeful availment of New York's dependable and transparent banking system, the dollar as a stable and fungible currency, and the predictable jurisdictional and commercial law of the United States." *Id.*, at *3. The Court further found that there had to be some relatedness between the use of the correspondent bank and the claim at issue—the claim could not be "completely unmoored" from the transaction utilizing the correspondent account. In that case, the complaint alleged that LCB used the correspondent account repeatedly to support a terrorist organization. *Id.* *4.

Under New York law, then, a foreign bank's maintenance and use of a correspondent account in New York can be sufficient to support personal jurisdiction, at least where transactions indicate purposeful availment of New York's banking system and those transactions relate to the claim at issue.

c. Statutory Jurisdiction under Rule 4(k)(2)

Even if personal jurisdiction under the C.P.L.R. is not proper, however, that does not signify that a nondomiciliary entity is automatically outside this Court's jurisdiction. Assuming, *arguendo*, that no C.P.L.R.-based jurisdiction exists, to the extent federal questions are at issue—and plaintiffs have asserted such questions here—the Court might still exercise personal jurisdiction under the federal question personal jurisdiction statute, Fed. R. Civ. P. 4(k)(2).

Rule 4(k)(2) subjects a defendant to this Court's personal jurisdiction where plaintiff demonstrates that (1) the claim arises under federal law; (2) the defendant is not "subject to jurisdiction in any state's courts of general jurisdiction"; and (3) the exercise of jurisdiction is "consistent with the United States Constitution and laws"—*e.g.*, it comports with due process. See *Porina* v. *Marward Shipping Co., Ltd.*, 521 F.3d 122, 127 (2d Cir. 2008).

As with 4(k)(1)(A) jurisdiction, plaintiff need only raise a prima facie case that 4(k)(2) jurisdiction is proper to survive a Rule 12(b)(2) motion to dismiss. See, *e.g.*, *Catlin Ins. Co. (UK) Ltd.* v. *Bernuth Lines Ltd.*, 12-1773-CV, 2013 WL 406273 (2d Cir. Feb. 4, 2013) (stating prima facie standard in context of 4(k)(2) analysis).

d. Due Process Analysis

If this Court determines that statutory jurisdiction—either under Rule 4(k)(1) or Rule 4(k)(2)—is proper, it must finally ask whether such jurisdiction comports with due process.

1. Minimum Contacts

In doing so, the Court first asks whether sufficient minimum contacts exist between that nonresident defendant and either New York (under Rule 4(k)(1)) or the United States generally (under Rule 4(k)(2)), such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945); *Worldwide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 291 (1980).

The minimum contacts necessary to comport with the New York jurisdictional statutes, C.P.L.R. §§ 301 and 302, necessarily comport with the Due Process Clause since New York law requires a greater showing of minimum contacts than would be required by the Due Process Clause alone. See *Licci I*, 673 F.3d at 60–61 ("The New York long-arm statute does not extend in all respects to the constitutional limits established by *International Shoe*.") Thus, the "purposeful availment" analysis for specific jurisdiction under C.P.L.R. 302(a) satisfies a similar purposeful availment analysis under the Due Process Clause. See *Burger King Corp.*, 471 U.S. at 472 (setting forth purposeful availment standard under the Due Process Clause).

In contrast, the "minimum contacts" prong for federal question personal jurisdiction under Rule 4(k)(2) focuses on whether the defendant "has the requisite aggregate contacts with the United States" as a whole. *Eskofot A/S* v. *E.I. Du Pont De Nemours & Co.*, 872 F. Supp. 81, 87 (S.D.N.Y. 1995). The Second Circuit has held that those contacts may be satisfied by "(1) transacting business in the United States, (2) doing an act in the United States, or (3) having an effect in the United States by an act done elsewhere." See *Id.* at 87 (citing *Leasco Data Processing Equipment Corp.* v. *Maxwell*, 468 F.2d 1326, 1340 (2d Cir. 1972)).

2. Reasonableness Factors

Lastly, if the defendant has sufficient minimum contacts, the Court must also determine that the exercise of personal jurisdiction over this defendant is reasonable. *Chloe*, 616 F.3d at 172–73; *MacDermid*, 702 F.3d at 730–31. The Supreme Court has established five factors this Court must consider in order to determine whether the exercise of personal jurisdiction is reasonable:

1. The burden on the defendant;
2. The interests of the forum State;
3. The plaintiffs' interests in obtaining relief;
4. The interstate judicial system's interest in obtaining the most efficient resolution of controversies; and
5. The shared interest of the Several States in furthering substantive social policies.

Asahi Metal Indus. Co. v. *Superior Court*, 480 U.S. 102, 113–14 (1987); *Chloe*, 616 F.3d at 172–73.

The mere fact that a defendant is foreign and would have to travel to New York is insufficient to defeat a finding of reasonableness. See *MacDermid*, 702 F.3d at 730–31 (holding that the fact that defendant was Canadian was insufficient to defeat minimum contacts; the defendant's act of accessing a computer server located within New York from outside the state satisfied the minimum contacts requirement); *Kernan* v. *Kurz-Hastings., Inc.*, 175 F.3d 236, 244 (2d Cir. 1999) (holding that burden on Japanese defendant to defend suit in the United States was insufficient to overcome its minimum contacts-particularly in light of the ease of modern travel and communication).

e. Personal Jurisdiction over UBAE

UBAE asserts that plaintiffs are unable to make out a prima facie basis for personal jurisdiction. This Court disagrees. Plaintiffs have alleged sufficient facts which, when analyzed against the legal framework set forth above, leave no doubt that either specific jurisdiction over UBAE exists pursuant to C.P.L.R. 302(a)(1) or, in the alternative, that jurisdiction exists under the federal question provision, Rule 4(k)(2).

1. Specific Jurisdiction

Plaintiffs base personal jurisdiction as to UBAE on the New York long-arm statute, C.P.L.R. § 302. They suggest that jurisdiction is proper under the "transacting business" provision, § 302(a)(1), as well as the provisions for personal jurisdiction based on tortious acts committed within New York, C.P.L.R. § 302(a)(2), and those committed without New York, C.P.L.R. § 302(a)(3)(ii). The Court need not address the tortious acts basis for specific jurisdiction since plaintiffs clearly make out a prima facie case of "transacting business" jurisdiction.

While the parties do not agree as to how and why certain transactions relating to the bonds were structured and occurred as they did, the allegations in the complaint, UBAE's factual concessions contained in the Matranga declaration (ECF No. 95), and the materials presented in the Vogel Declaration in opposition to UBAE's Rule 12(b)(2) motion (ECF No. 323) are sufficient to meet the standard for "transacting business" in New York.

UBAE admits that a series of acts occurred relating to the Markazi Bonds—but it argues that those acts all occurred outside of the United States, and further, that UBAE has no presence in the United States at all. (See Matranga Decl. ¶ 3 ("UBAE did not advertise, solicit business, or market its services in New York, or anywhere in the United States.") In this regard, UBAE asserts that it followed Bank Markazi's directive to sell two of the Markazi Bonds securities with a combined face value of $250 million. (Matranga Reply Decl. ¶ 7.) Though the securities were physically held in New York, UBAE would work exclusively from Luxembourg to buy the $250 million in securities from Bank Markazi and negotiate a higher price on the open market. (*Id.* ¶ 8.) It would then pocket the difference between the two as its fee. (*Id.*)

While the structure of the transaction did not cause UBAE to send personnel into New York, UBAE ignores the crucial fact that the bonds were physically located in New York at the time of sale; therefore, by definition UBAE engaged in sales transactions for bonds physically located in New York. In addition, plaintiffs present evidence from UBAE's own sales records that indicate that UBAE distributed sales proceeds and interest payments from the Markazi Bonds via its correspondent account at HSBC in New York. (See Decl. of Liviu Vogel in Opp. to UBAE Mot. to Dismiss ("Vogel UBAE MTD Decl.") Exs. C–F.)

This pathway of proceeds through New York is enough to constitute § 302 "transacting business". N.Y.

C.P.L.R. § 302(a)(1). The fact that UBAE may have been making all of the arrangements relating to the sales outside of the U.S. cannot erase the fact that the bonds and proceeds relating thereto physically transferred in New York. UBAE used its correspondent account to process the proceeds of the sale because it offered the stability and security of the New York banking laws—purposeful availment analogous to that in *Licci II*.

Finally, UBAE argues that since it was unaware of plaintiffs' judgment until June 2008, there cannot be any causal connection between its March 2008 actions and trying to avoid that judgment. This argument also fails. The New York long-arm statute provides that an entity or its agent may engage in conduct which supports jurisdiction. See, *e.g.*, *Kreutter* v. *McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (N.Y. 1988) (finding C.P.L.R. § 301(a)(1) jurisdiction proper where corporation never entered New York, but its agent engaged in "purposeful activities in this State in relation to his transaction for the benefit of and with the knowledge and consent [of the corporation] and that they exercised some control over [the agent]").

Even if UBAE itself was not transacting business in New York, its agents most certainly were. Plaintiffs have sufficiently alleged, and the facts in the record support, that Bank Markazi and Clearstream were aware of plaintiffs' judgments at the time that UBAE was engaged to open an account and engage in a sale transaction on behalf of Bank Markazi. (SAC ¶¶ 13, 15, 24, 37, 41.) UBAE's own concession that Clearstream was acting on its behalf in the United States and its more recent statements in opposition to plaintiffs' motion for partial summary judgment[5] are sufficient to support an agency relationship. (See Matranga Reply Decl. ¶¶ 8–10.)

2. Rule 4(k)(2) Jurisdiction

By arguing that it has no presence in the United States and did not engage in transactions in New York sufficiently related to the instant dispute to constitute "transacting business" jurisdiction, however, UBAE has in fact established the necessary predicate for personal jurisdiction pursuant to Fed. R. Civ. P. 4(k)(2). It is undisputed that this case raises federal claims—the execution of the judgments obtained by plaintiffs is governed by federal laws FSIA, TRIA, E.O. 13599, and 22 U.S.C. § 8772. Rule 4(k)(2) applies to just such situations.[6] UBAE argues strenuously that it has no presence in the United States that would subject it to general personal jurisdiction in any state. (See Matranga Decl. ¶ 4.) Provided that exercising jurisdiction over UBAE anywhere in the United States comports with due process, in personam jurisdiction in this Court is proper. Fed. R. Civ. P. 4(k)(2).

3. Due Process Analysis

Indeed, under the New York long-arm statute—and thus under the Due Process Clause itself—there are sufficient minimum contacts (under *International Shoe* and its progeny) between New York / the United States and UBAE to exercise jurisdiction, and doing so would undoubtedly be reasonable.

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[5] In its summary judgment opposition brief, UBAE admits both that it "has not asserted a legally cognizable interest in the restrained bonds" and that "UBAE is not in 'possession' or 'custody' of any of the restrained bonds." (UBAE SJ Opp. Br. at 2.)

[6] As stated above, Rule 4(k)(2) provides: "For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2).

First, UBAE itself has conceded that it uses the services of its correspondent bank on a daily basis to manage its U.S. dollar holdings. (See Matranga Decl. ¶¶ 5–6.) In addition, its actions with respect to the bonds were aimed at New York—and it caused transfers between a number of New York financial institutions in order to complete (*e.g.* the FBNY, DTC, Citibank, JP Morgan Chase, just to name those as to which even UBAE cannot assert a lack of involvement).

The *Asahi* "reasonableness" factors are also met both for jurisdiction pursuant to Rule 4(k)(2) and/or pursuant to New York's long arm statute. The burden on UBAE of defending this suit is minimal in comparison to the interests of New York and the United States in providing a forum to adjudicate disputes over bond proceeds physically located in New York. In addition, plaintiffs have a strong interest in—and right to—seek relief from Iran. That relief would be stymied if UBAE, acting as agent of Bank Markazi, was able to take those precise acts Bank Markazi would have taken with respect to the Blocked Assets present in New York, but evade jurisdiction here. Likewise, bringing UBAE before this court will enable efficient resolution of plaintiffs' claims as to these assets in a single proceeding, putting an end to the years of disjointed litigation and delays. Finally, only by subjecting UBAE to this Court's jurisdiction will the Court be able to enforce the policies behind the anti-terrorism provisions of FSIA, TRIA and Section 8772—as Congress clearly intended.

As the requirements of the Due Process Clause are met with respect to UBAE, this Court therefore finds that plaintiffs make out a prima facie case of specific personal jurisdiction under Fed. R. Civ. P. 4(k)(1)(A), incorporating C.P.L.R. § 302(a). In the alternative, Rule 4(k)(2) jurisdiction is proper. UBAE's Rule 12(b)(2) motion to dismiss is denied.

f. Analysis regarding Clearstream

Clearstream's motion to dismiss for lack of personal jurisdiction also fails. As an initial matter, it is rather remarkable that Clearstream has spent the time to make such an argument given the existence and persistence of its New York operations supportive of its overall business. The Court finds that there are bases to suggest both general jurisdiction and specific jurisdiction over Clearstream under Rule 4(k)(1).[7]

Clearstream is clearly doing business in New York and thus subject to general jurisdiction under C.P.L.R. § 301. For such a determination it is unnecessary that Clearstream conduct all of its business in New York—or even that the specific facts relating to the issues in this case relate to specific acts taken in New York. See *Gelfand* v. *Tanner Motor Tours. Ltd.*, 385 F.2d 116, 121 (2d Cir. 1967) ("[A] foreign corporation is doing business in New York 'in the traditional sense' when its New York representative provides services beyond 'mere solicitation' and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services."). It is enough that as a general matter it is in fact doing business in New York. This is evidenced by the presence of a Clearstream office in New York, which employs Clearstream employees for the purpose of obtaining and also supporting business for Clearstream Luxembourg from New York. As the evidence demonstrates, Clearstream in New York is not merely soliciting business—it provides support services for its Luxembourg operations and is part of Clearstream's overall strategy to "provide[] global services to the securities industry . . . close to its customers in all major time zones" (See Letter of Liviu Vogel to Hon. Barbara S. Jones Ex. 1 at 2, Aug. 14, 2009, ECF No. 178.) These activities demonstrate the "permanence and continuity" required for § 301 general jurisdiction. *Cf. Hoffritz for Cutlery, Inc.* v. *Amajac, Ltd.*, 763 F.2d at 58 (finding no general § 301 jurisdiction where nonresident defendant lacked an office in New York, did not solicit business in the state and did not have bank accounts, other property or employees in the state).

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[7] A basis for Rule 4(k)(2) jurisdiction may also exist over Clearstream, but—unlike UBAE—Clearstream has not alleged that it cannot be subject to general personal jurisdiction in any U.S. jurisdiction—a prerequisite for 4(k)(2) jurisdiction.

However, even if this Court were to analyze whether there is a sufficient basis for long-arm jurisdiction over Clearstream Luxembourg, the answer would still clearly—and resoundingly—have to be "yes." Clearstream Luxembourg's contacts with New York relate directly to plaintiffs' allegations regarding the Markazi Bonds that were maintained at the FBNY and DTC in New York. Even if this Court were to ignore the presence of Clearstream's office on Broad Street in New York, the fact that Clearstream Luxembourg engaged in a series of financial transactions over an extended period of time with regard to these New York based bonds would require a finding of sufficient "transacting business" for long-arm jurisdiction under C.P.L.R. § 302(a)—and, necessarily, also a finding of sufficient minimum contacts to satisfy due process.

That transaction of business is clear from Clearstream's innumerable acts to maintain its New York-based Citibank account. It has repeatedly communicated with Citibank about the Blocked Assets and arranged for various transactions with Citibank. (See, *e.g.*, Decl. of Liviu Vogel in Opp. to Clearstream's Mot. to Vacate Restraints ("Vogel Vacate Restraints Opp. Decl.") Exs. 4, 16, ECF No. 299.) It is irrelevant whether its New York office had anything to do with those actions. It is enough that Clearstream's Luxembourg operations repeatedly had contacts with New York by virtue of its account at Citibank—and that the account has, at all relevant times, been connected with the Blocked Assets. See *Licci II*, 2012 WL 5844997 ("[T]he 'arise-from' prong [of C.P.L.R. § 302(a)(1)] limits the broader 'transaction-of-business' prong to confer jurisdiction only over those claims in some way arguably connected to the transaction.").

Finally, applying the *Asahi* factors suggests that exercising personal jurisdiction with respect to Clearstream is reasonable. The interests with respect to Clearstream are nearly identical to those for UBAE. And the burden on Clearstream to defend a suit in this Court is minimal given Clearstream's continuous and systematic contacts with New York.

Clearstream is subject to this Court's general personal jurisdiction and, in the alternative, plaintiff makes out a prima facie case of "transacting business" jurisdiction under the New York long-arm statute. Clearstream's Rule 12(b)(2) motion to dismiss is denied.

B. Bank Markazi's Motion to Dismiss

Bank Markazi has moved to dismiss plaintiffs' claims on the basis of a lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1). Bank Markazi argues that (1) plaintiffs' TRIA § 201 claim raises a non-justiciable political question, (2) that the assets are technically not "of"—*i.e.*, not owned by—Bank Markazi, (3) that the situs of the bonds is outside the jurisdiction of this Court, (4) that execution would violate U.S. obligations under the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran ("Treaty of Amity"), Aug. 15, 1955, 8 U.S.T. 899, and finally (5) that the assets are immune central banking assets under FSIA § 1611(b)(1).

i. Rule 12(b)(1) Standard of Review

Federal district courts are courts of limited jurisdiction. Challenges to a court's subject matter jurisdiction are challenges to the ability of the Court to entertain an action in the first instance. The party invoking federal subject matter jurisdiction bears the burden of establishing that jurisdiction exists by a preponderance of the evidence. See *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Makarova* v. *United States*, 201 F.3d 110, 113 (2d Cir. 2000). Determining the existence of subject matter jurisdiction is a threshold inquiry; a case is properly dismissed under Fed. R. Civ. P. 12(b)(1) when the district court lacks the constitutional power to adjudicate it. See *Arar* v. *Ashcroft*, 532 F.3d 157, 168 (2d Cir. 2008).

A defendant may challenge either the legal or factual sufficiency of plaintiffs' assertion of jurisdiction. *Nat'l Union Fire Ins. Co. of Pittsburgh* v. *BP Amoco PLC*, 319 F. Supp. 2d 352, 371 (S.D.N.Y. 2004). In determining whether this Court has subject matter jurisdiction over plaintiffs' actions, it must accept as true all material factual allegations in the SAC, but because jurisdiction must be shown affirmatively, this Court must refrain from drawing inferences favorable to the parties asserting jurisdiction (here, plaintiffs). See *APWU* v. *Potter*, 343 F.3d 619, 623 (2d Cir. 2003). The Court can resolve disputed factual issues by reference to evidence outside of the pleadings. See *Flores* v. *Southern Peru Copper Corp.*, 343 F.3d 140, 161 n.30 (2d Cir. 2003); see also *Makarova*, 201 F.3d at 113.

ii. Analysis as to Bank Markazi

An analysis of the facts regarding the actions and assets of Bank Markazi in this district leaves no serious doubt that this Court has subject matter jurisdiction.

1. Political Question

Courts lack authority to decide non-justiciable political questions. *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 132 S. Ct. 1421, 1427 (2012). Bank Markazi argues that the European Union's ("E.U.") blocking regime has frozen all assets of the Central Bank of Iran and thereby created a non-justiciable political question with respect to any action this Court might take under U.S. law that would impact the holders of the Blocked Assets under European law.

In 2010, the E.U. enacted regulations that froze "all funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in [certain annexes]." See Council Regulation (EU) No. 961/2010, Article 16(1)-(3). These regulations also provide that "no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in [certain annexes]." *Id.*

Bank Markazi was not listed on the original annexes. However, on January 24, 2012—just prior to the issuance of E.O. 13599 in the United States—it was added. See Council Implementing Regulation (EU) No. 54/2012 of January 23, 2012, Article 1.1 (Annex VIII ¶ 51).

In addition, article 23(2) of an EU regulation passed in March 2012 consolidated previous regulations and explicitly maintained the freeze on assets of the Central Bank of Iran. Council Regulation (EU) No. 267/2012, Arendt III ¶¶ 51–52 & Exh. J. The freezing of funds prevents "any move, transfer, alteration, use of, access to, or dealing in funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination, or other change that would enable the funds to be used, including portfolio management." *Id.*

According to Bank Markazi, the EU regulations change everything. It argues that, even assuming that the Blocked Assets are assets "of" Bank Markazi (which, as discussed below, it argues is incorrect), the EU blocking regime presents direct competition with E.O. 13599—competition that implicates foreign relations concerns and must be resolved by the political—not judicial—branches of government. (See Bank Markazi Reply Mem. in Support of Mot. to Dismiss ("Markazi MTD Reply") at 3–4 (adopting Clearstream Reply Memorandum in Support of its Renewed Mot. to Vacate Restraints ("Clearstream Mot. to Vacate Reply") at 9–16, ECF No. 220).)

The facts giving rise to this conflict are both simple and technical: a debit to the Blocked Assets in Clearstream's Omnibus Account at Citibank in New York by virtue of turnover would require a corresponding debit in

Clearstream's Luxembourg account—constituting a direct violation of the EU Regulation.[8]

In connection with this motion only, in order to allow the Court to decide the issue, Bank Markazi affirmatively makes the following factual assumptions: that the underlying beneficial owner of the Blocked Assets is Bank Markazi, that Bank Markazi's transfer to UBAE has been "undone" such that the assets remain in an account between Clearstream and Bank Markazi, that this Court can exercise personal jurisdiction over Clearstream in New York, and that all of the other actions by other banks and issuers occurred in New York. (See *Id.* at 4–6 (argument adopted by Bank Markazi as explained in Clearstream brief).)

2. Political Question Analysis

The E.U. and U.S. blocking regimes are not here in "competition", and they do not create a non-justiciable political question.

Whether or not a question is "political," and therefore non-justiciable, is determined by reference to six factors:

> [(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [(2)] a lack of judicially discoverable and manageable standards for resolving it; or [(3)] the impossibility of deciding without an [initial] policy determination of a kind clearly for non-judicial discretion; or [(4)] the impossibility of the court's undertaking independent resolution without expressing lack of respect due coordinate branches of

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[8] Markazi—via Clearstream—argues that the debit would constitute a "change in volume, amount, location, ownership, possession, character, [or] destination" of the Blocked Assets. (See Clearstream Vacate Restraints Reply Br. at 13.)

> government; or [(5)] an unusual need for unquestioning adherence to a political decision already made; or [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. *Carr*, 369 U.S. 186, 217 (1962); see also *767 Third Ave. Assocs.* v. *Consulate Gen. of Socialist Fed. Republic of Yugoslavia*, 218 F.3d 152, 160 (2d Cir. 2000).

Bank Markazi argues that the EU and U.S. blocking regimes raise important questions of foreign relations, lack judicially manageable standards, and generally raise *Baker* v. *Carr* concerns. This Court disagrees.

To the extent that the differential treatment of the assets of terrorist states raises foreign relations concerns, the executive and legislative branches have demonstrated a clear intent that not only permits but affirmatively encourages the judiciary to resolve the issues surrounding restraint and turnover of such assets. As set out above, the sheer multitude of statutory and executive pronouncements directly and unquestionably applicable to the motions before this Court makes any political question argument baseless.

Bank Markazi can point to no aspect of the Constitution that commits the treatment of a hypothetical turnover of U.S.-based assets by a foreign legal system to a "coordinate political department" Instead, Congress and the President agree that it is the province of the judiciary to determine the effect, if any, of these competing regimes: provisions of the FSIA, as described above, enable courts to enforce judgments against sovereigns when those judgments relate to acts of terrorism; TRIA allows a court to execute against blocked assets of a terrorist party; E.O. 13599 provides that assets of Iran and the Central Bank of Iran are blocked; the SDN list indicates that Iran and Bank Markazi are on the list of blocked terrorist organizations; and finally, the most recent pronouncement, 22 U.S.C. § 8772, specifically provides that the assets at issue in this very lawsuit are subject to execution and attachment in aid of execution.

Nor can there be a suggestion of a lack of judicially manageable standards to resolve the potential friction between the U.S. and E.U. regimes. Congress enacted 22 U.S.C. § 8772 in August 2012—well after March 2012, when the EU promulgated the last of its blocking Regulations referred to by Clearstream. Congress certainly could have altered the statute in light of the E.U. regulations; it chose not to do so.

Instead, § 8772 gives this Court clear standards to rule on the questions before it with respect to these very assets. The statute spells out specific requirements for judicial determinations as to whether a non-Iranian entity has a constitutionally protected interest in the assets, or holds equitable or beneficial title or interest in the assets. See 22 U.S.C. § 8772(a)(2). Together, these various statutes and orders require this Court to find that it should rule on the very questions here presented. In addition, of course, it cannot be that a court must refrain from adjudicating a dispute where the potential exists for a foreign legal regime to impose penalties on a litigant based on the U.S. court's decision. Foreign ramifications alone do not create a non-justiciable political question. And they do not here.

3. Ownership of the Blocked Assets

Bank Markazi next argues that the Blocked Assets are not assets "of" Bank Markazi. Bank Markazi states a showing of ownership is required for subject matter jurisdiction under TRIA § 201(a).[9]

Even if Bank Markazi were correct regarding TRIA (and it is not), that does not mean this court lacks subject matter jurisdiction. The 2012 Act, § 8772, specifically trumps "any other provision of law" and specifically permits execution on the assets specifically at issue in this litigation, rendering moot any ambiguity in TRIA. 22 U.S.C. § 8772(a)(1).

Even in the absence of § 8772, however, this Court finds that TRIA provides for subject matter jurisdiction with respect to Bank Markazi. It is true that TRIA authorizes execution of assets "of" a terrorist party. See 28 U.S.C. § 1610 n. (2006) ("[I]n every case in which a person has obtained a judgment against a terrorist party the blocked assets of that terrorist party shall be subject to execution ") (emphasis added). In the case of the Blocked Assets here at issue, Bank Markazi is the only owner. Clearstream—in whose name the Citibank account is listed—never claims it "owns" the assets. UBAE argues it has acted with respect to the assets merely on behalf of Bank Markazi. (See UBAE SJ Opp. Br. at 2 (stating UBAE "has not asserted a legally cognizable interest in the restrained bonds" and that "UBAE is not in 'possession' or 'custody' of any of the restrained bonds"); Matranga Reply Decl. ¶¶ 7–10.) Citibank states that it is a neutral stakeholder. (See Letter of Sharon L. Schneier to the Hon. Katherine B. Forrest, Dec. 14, 2012, ECF No. 300).

Bank Markazi has repeatedly conceded at a variety of times in connection with this litigation—and Clearstream has stipulated for the limited purpose of resolving its motion to vacate the restraints, *infra*—Bank Markazi is "the" sole beneficial owner of the assets.[10]

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[9] Section 201(a) refers to attachment only of the "blocked assets of th[e] terrorist party" (emphasis added).

Bank Markazi suggests that Judge Cote's decision in *Calderon-Cardona* v. *JPMorgan Chase Bank, N.A.*, 867 F Supp. 2d 389, 400 (S.D.N.Y. 2011), counsels a different result.[11] This Court disagrees.

The Court in *Calderon-Cardona* held that electronic funds transfers ("EFTs") allegedly related to North Korea were not subject to attachment under TRIA and the FSIA. It is distinguishable in several respects: first, the *Calderon-Cardona* decision related to mid-stream EFTs—rapid funds transfers between a sending and receiving bank, processed by an intermediary bank—rather than the static proceeds of financial instruments.

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[10] Bank Markazi has stated that "Over $1.75 billion in securities belonging to Bank Markazi are frozen in custodial Omnibus Account at [Citibank]"; that the "Restrained Securities are the property of Bank Markazi, the Central Bank of Iran", that the "aggregate value of the remaining bond instruments, i.e. the Restrained Securities that are the property of Bank Markazi and the subject of the Turnover Action—is thus $1.753 billion"; that the "Restrained Securities are the property of a Foreign Central Bank ."; that the "Restrained Securities are presumed to be the property of Bank Markazi"; and "the Restrained Securities are prima facie the property of a third party, Bank Markazi . ." (See Bank Markazi's First Mem. of L. in Support of its Mot. to Dismiss the Am. Compl., May 11, 2011, ECF No. 18 ("Markazi's First MOL"), at 1, 5, 9, 10, 36 (emphases added).) In addition, two officers of Bank Markazi have sworn under penalty of perjury that the Blocked Assets are the "sole property of Bank Markazi and held for its own account." (Aff. of Gholamossein Arabieh ¶ 2, Vogel Decl. Ex. J, Oct. 17, 2010, ECF No. 210; Aff. of Ali Asghar Massoumi ¶ 2, Vogel Decl. Ex. K, Oct. 17, 2010, ECF No. 210).

[11] As with the political question arguments, Markazi expressly adopted this argument from Clearstream's memoranda in support of its motion to vacate the restraints. (See Markazi MTD Reply at 5.)

Id. A significant question in *Calderon-Cardona* was whether the EFTs were "owned" by North Korea at the time of the transfers. *Id.* In finding no such ownership, the Court noted Second Circuit precedent holding that—according to New York law—"EFTs are neither the property of the originator nor the beneficiary while briefly in the possession of an intermediary bank." *Id.* at 400 (citing *Shipping Corp. of India Ltd.* v. *Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 71 (2d Cir. 2009)). Even if North Korea was the originator or beneficiary, then, it could not be the "owner" of the EFTs for the purposes of TRIA. *Id.* The Court concluded that "[t]he petitioners have pled no facts indicating that North Korea has an interest in any of the blocked accounts that exceeds that of an originator or beneficiary in a midstream EFT." *Id.* at 407.

In contrast, here, nearly $2 billion in bond proceeds is sitting in an account in New York at Citibank—there are no fleeting or ephemeral interests like those that occur in EFTs. The only entity with any financial interest in the funds in the account is Bank Markazi—as it has stipulated for the purposes of this motion, but also as it has repeatedly asserted. Clearstream has no such interest; UBAE's interest is analogous to that of Clearstream (and, as it states, it has no legally cognizable interest). Any possible contrary interpretation under state law is expressly preempted by the express language of § 8772.

Accordingly, on these facts, this Court need not choose whether it is necessary to follow the *Calderon-Cardona* rationale or those of the other cases in this District involving EFTs. See, *e.g.*, *Hausler* v. *JP Morgan Chase Bank, N.A.* (hereinafter "Hausler I"), 740 F Supp. 2d 525 (S.D.N.Y. 2010); *Hausler* v. *JP Morgan Chase Bank, N.A.* (hereinafter "Hausler II"), 845 F Supp. 2d 553

(S.D.N.Y. 2012); *Levin* v. *Bank of N.Y.*, No. 09 Civ. 5900, 2011 WL 812032 (S.D.N.Y. Mar. 4, 2011). All of the EFT cases attempt to answer whether transfers between financial institutions that pass through a banking institution within the U.S. are nonetheless "assets of" the terrorist party to whose benefit the transfers may ultimately inure. See, *e.g.*, *Hausler I*, 740 F. Supp. 2d at 526; *Hausler II*, 845 F Supp. 2d at 558–561; *Levin*, 2011 WL 812032, at *11. Only one of the cases—*Levin*—dealt with any proceeds of financial instruments; the Court in *Levin* issued a turnover order for those assets. See *Levin*, 2011 WL 812032, at *20–21 (finding no bar under New York law to turnover of non-EFT accounts allegedly owned by instrumentalities of Iran).

4. Location of the Blocked Assets and Treaty of Amity

Markazi's remaining arguments—(1) that the bonds are not located in the United States and therefore cannot be executed upon under FSIA and (2) that blocking the assets violates U.S. treaty obligations—fail for the same reason: 22 U.S.C. § 8772 obviates any need for this Court to rely on TRIA or the Treaty of Amity for resolution of this motion.

However, even if this Court were to ignore § 8772, the arguments nonetheless fail.

First, Bank Markazi argues that the Markazi Bonds are located in Luxembourg and thus outside this Court's jurisdiction. (See Markazi MTD Reply Br. at 6.) They cite this Court's decision in a related case, *Bank of Tokyo–Mitsubishi, UFJ, Ltd. New York Branch* v. *Peterson*, No. 12 Civ. 4038(BSJ), 2012 WL 1963382, at *2 (S.D.N.Y. May 29, 2012), for the proposition that assets held outside the United States are not subject to execution.

This "extra-territoriality" argument assumes that the Blocked Assets are located outside of the United States. This argument is sophistry: the Blocked Assets are located in a bank account at Citibank in New York (additional assets relating to the now liquidated $250 million in Markazi Bonds do not appear to be in New York, but their location is irrelevant to the resolution of this motion). It may well be that there are account entries on the books of entities in Europe—such as Clearstream Luxembourg—relating to the Blocked Assets. But the mere fact that the account at Citibank is listed under the Clearstream and UBAE names does not alter the fact that those entities are agents of Bank Markazi. Nor do mere book entries in Luxembourg transform the Citibank New York account into assets located in Luxembourg.[12]

In addition, the Treaty of Amity provides no barrier to subject matter jurisdiction. Bank Markazi argues that Arts. III.2 and IV.1 of the Treaty entitle it to separate juridical status from Iran and, as such, its assets cannot be seized to satisfy a judgment against the sovereign state. (Markazi MTD Br. at 22.)

The treaty is inapplicable. First, irrespective of any interpretation of the language of the Treaty, in *Weinstein* v. *Islamic Republic of Iran*, 609 F.3d 43, 53 (2d Cir. 2010) the Second Circuit stated that the phrase "notwithstanding any other provision of law" in FSIA effectively trumps any conflicting law. As to the textual interpretation of the Treaty itself, the *Weinstein* Court held that the Treaty of Amity provisions cited by Bank Markazi are inapposite; the purpose behind the Treaty of Amity was "simply to grant legal status to corporations of each of the signatory countries in the territory of the other, thus putting the foreign corporations on equal footing with domestic corporations." *Id.* at 53. There is no basis to find that the Treaty was intended to be used or has been used to aid instrumentalities of foreign governments to circumvent congressional acts or authorized legal actions.

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[12] This is particularly true in light of 22 U.S.C. § 8772, its preemption of any contrary law, and its required narrow judicial determinations.

Lest any ambiguity remain, Congress inserted an additional "notwithstanding" clause in 22 U.S.C. § 8772(a)(1). That clause evinces clear Congressional intent to abrogate treaty language inconsistent with FSIA and § 8772. *Id.* (noting Circuit Courts have interpreted similar "notwithstanding" clauses to abrogate treaty language). To do otherwise would render FSIA a dead letter—something Congress and the President clearly did not intend.

Thus, the plain language of the Treaty of Amity renders it inapplicable to the Blocked Assets and, further, Congress has abrogated any application of the Treaty in the FSIA context.

5. Central Bank Immunity

Bank Markazi's final set of arguments assert FISA § 1611(b)(1) immunity from attachment for assets used for central banking purposes. FSIA § 1611(b)(1) provides that "the property .. of a foreign central bank or monetary authority held for its own account" is entitled to immunity from attachment and execution. The Court only has jurisdiction to hear a turnover action for sovereign assets where a valid exception to FSIA exists; the central banking rule negates any FSIA exception. See *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 129–30 (2d Cir. 2009) (citing FSIA § 1609).

Again, even if the Blocked Assets were, in fact, "held for [the central bank's] own account," TRIA § 201(a), E.O. 13599, and 22 U.S .C. § 8772 expressly preempt any immunity.

Congress is presumed to be aware of its previous enactments when it passes a new statute. See *Vimar Seguors y Reaseguros, S.A.* v. *M/V Sky Reefer*, 515 U.S. 528, 554 (1995) (citing *Cannon* v. *Univ. of Chicago*, 441 U.S. 677, 696–699 (1999)). TRIA's "notwithstanding" clause—enacted well after § 1611(b) was adopted in 1976—thus preempts central bank immunity to the extent it would apply. TRIA § 201(a). As the Supreme Court has observed, "a clearer statement" of intent to supersede all other laws than a "notwithstanding clause" is "difficult to imagine." *Cisneros* v. *Alpine Ridge Group*, 508 U.S. 10, 18 (1993).

Beyond the statutory language, E.O. 13599 suggests that Bank Markazi is not engaged in activities protected by § 1611(b), and thus is not entitled to immunity. The Order makes a finding that Bank Markazi's assets are blocked "in light of the deceptive practices of [Bank Markazi] and other Iranian banks to conceal transactions of sanctioned parties and the continuing and unacceptable risk posed to the international financial system by Iran's activities " E.O. 13599. This executive determination suggests that the activities of Bank Markazi are not central banking activities that would provide § 1611(b) immunity. See *NML*, 652 F.3d at 172 (setting forth functional test for central banking activities).

Finally, § 8772 also applies "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity[.]" 22 U.S.C. § 8772(a)(1) (emphasis added). Assuming—as the Court finds below—that §8772 is valid, it must also find no central bank immunity.

In light of the above conclusions, there is no doubt that this Court has subject matter jurisdiction with respect to claims asserted against Bank Markazi. Its motion to dismiss is denied.

IV. MOTION TO VACATE RESTRAINTS

A. Background and Procedural History

As set forth above, in 2008, plaintiffs obtained writs of attachment and execution against an account that Clearstream maintained at Citibank, imposing restraints—restrictions against the transfer or disposal of the assets in that account. That account was used to manage proceeds connected to the Markazi Bonds.

In June 2008, Clearstream challenged the restraints and this Court held an evidentiary hearing. At that hearing, Clearstream presented evidence that "at one time Clearstream's [customer, the Central Bank of Iran ("Bank Markazi"), was the underlying beneficial owner of the securities entitlements identified in the restraints, but that in February 2008] Bank Markazi [transferred all but one of its securities entitlements to the bonds identified in the restraints from its account at Clearstream to an account with another Clearstream customer], Banca UBAE S.p.A." (See Clearstream's Consol. Mem. in Supp. Of Mot. To Vacate Restraints ("Clearstream Vacate Br.) at 3.) At that hearing, a Clearstream employee testified that he did not know whether Bank Markazi remained the beneficial owner of the securities entitlements. (*Id.*) At the conclusion of the hearing, Judge Koeltl lifted the restraints as to the two bonds that had been sold to customers other than UBAE (valued at approximately U.S. $250 million). The restraints were not lifted as to the remaining assets held in Clearstream's Omnibus Account at Citibank. (*Id.* at 4.)

At a June 27, 2008, hearing, Clearstream moved again to vacate the remaining restraints—this time pursuant to the Uniform Commercial Code ("UCC"), § 8-112(c). Clearstream argued that neither it nor Citibank was a proper "garnishee" under the provision. Clearstream further argued that the restraints should be lifted since the securities entitlements were Clearstream's and not Bank Markazi's. (*Id.*)

On June 23, 2009, Judge Barbara Jones held that Clearstream was not a proper garnishee under § 8-112(c) of the UCC because all but one of the securities at issue were held at Clearstream in the name of UBAE, rather than Bank Markazi. (See Order, *Peterson et al.* v. *Islamic Republic of Iran et al.* (S.D.N.Y. June 23, 2009), ECF No. 171.) Bank Markazi, as an instrumentality of Iran, was the only proper garnishee under UCC § 8-112(c). The Order noted that it was possible, however, that the transfer of the Bank Markazi securities to the UBAE account was fraudulent and that Bank Markazi therefore remained the true holder of the securities. (*Id.*) She held that the restraints would remain in place pending a further judicial determination as to (1) whether such transfers could be fraudulent as a matter of law, (2) if they were, in fact, fraudulent, and (3) if Clearstream was (or could be made) a proper garnishee. (*Id.*)

The parties then briefed whether a judicial determination that the conveyance was fraudulent would alter the UCC analysis and whether Clearstream could in any event be a proper garnishee. (See Letter of Frank Panopoulos to Hon. Barbara S. Jones (hereinafter "Clearstream Restraints Br."), Aug. 14, 2009, ECF No. 181; Letter of Liviu Vogel to Hon. Barbara S. Jones (hereinafter "Pls.' Restraints Br."), Sept. 19, 2009, ECF No. 183). In the same briefing, plaintiffs also raised alternative theories supporting turnover of the same assets. (Pls.' Restraints Br. at 4–6.) The Court never issued a subsequent ruling addressing those arguments. Those arguments were then re-briefed and consolidated into Clearstream's motion to vacate now pending before this Court and resolved herein. (See Renewed Mot. To Vacate Restraints, ECF No. 174.)

Clearstream's motion to vacate initially relied upon the following five arguments:

- Clearstream is not a proper garnishee under UCC § 8-112(c);
- According to UCC § 8-110, Bank Markazi's assets or interests are located in Luxembourg and not this district and must be restrained there;
- Common law "situs" rules are not applicable as a basis to restrain or turnover the assets;
- The restrained assets are not "Blocked Assets" under TRIA;
- Equitable relief is unavailable to restrain and turnover the blocked assets.

In its reply memorandum on this motion, Clearstream adds a sixth argument—that the competing E.U. and U.S. blocking regimes present a non-justiciable political question, the same argument the Court rejected, *supra*, with respect to Bank Markazi's motion to dismiss.

In response to this series of arguments, plaintiffs contend that (1) the EU Regulation does not create a non-justiciable political question; (2) the UCC is inapplicable to the questions before this Court because TRIA preempts conflicting state law and the Blocked Assets are therefore subject to both the restraints and to turnover; (3) TRIA and E.O. 13599 render the situs argument inapplicable; and (4) that the restrained assets are designated as Blocked Assets. According to plaintiffs, New York's CPLR permits enforcement of plaintiffs' judgments against the cash held in the Omnibus Account.

B. Analysis

"Enough is enough" is the reductionist version of plaintiffs' response to Clearstream's motion to vacate. This Court agrees.

i. Political Question

The Court rejected the political question argument with respect to Bank Markazi's motion to dismiss and Clearstream's version of the argument is not materially different.

Clearstream adds only one novel aspect to its political question argument: it argues that a turnover order will subject it to inconsistent obligations in the United States and Europe. If the plaintiffs were to obtain a turnover order, the resulting debit in the Luxembourg book entry might violate the E.U. blocking regime and Clearstream's obligation to Bank Markazi.

However, even if a change in the Clearstream accounts in the U.S. will cause a book entry in Luxembourg—placing Clearstream at risk of violating EU Regulations—that issue is one left to Clearstream to address in the EU. As stated above, if this Court were required to hypothesize as to the implications of foreign regulations with respect to actions before it, paralysis would result in numerous situations: U.S. courts would no doubt be inundated with such issues brought forward tactically. There is no such hardline rule, and in a world of transnational commerce there should not be.

ii. Remaining Arguments for Vacating the Restraints

The same statute—22 U.S.C. § 8772—crucial to resolving Bank Markazi's motion to dismiss also answers the remaining arguments Clearstream has raised in support of its motion to vacate. Section 8772 specifically preempts "any other provision of law" including "any inconsistent provision of state law." 22 U.S.C. § 8772(a)(1). Accordingly, this Court need not address the potpourri of UCC-based arguments raised by Clearstream: Section 8772 provides that, so long as the appropriate judicial determinations are made, there is no legal barrier to execution on the Blocked Assets.

Accordingly, the Court denies Clearstream's motion to vacate the restraints.

V. PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs have moved for partial summary judgment against defendants Clearstream, Bank Markazi, and UBAE[13] on their cause of action for turnover of the approximately $1.75 billion[14] in Blocked Assets, held in the

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[13] UBAE did not file substantive opposition to plaintiffs' partial summary judgment motion initially. It argued that it should not be compelled to respond to plaintiffs' motion until its own Rule 12(b)(2) motion to dismiss had been decided. In the interests of judicial economy, the Court issued an Order on February 14, 2013, directing UBAE to file any opposition to plaintiffs' motion, and directed UBAE to "assume that the Court finds sufficient bases to exercise personal jurisdiction over it." (See Order, Feb. 14, 2013, ECF No. 325.) UBAE filed its substantive opposition brief on February 22, 2013. (ECF No. 328.)

[14] UBAE correctly points out that the two securities with a face value of $250 million it is alleged to have conveyed fraudulently in early 2008 are not at issue in the plaintiffs' motion for partial summary judgment. (See UBAE S.J. Opp. Br. at 2 n.2.) The Court does not resolve any merits issues as regards claims based on this alleged conveyance.

Omnibus Account at Citibank.[15]

The Court has already determined that the assets at issue are properly restrained. The question before the Court is now whether there exist triable issues of fact as to whether those assets are subject to turnover.

While both Clearstream and Bank Markazi raise additional arguments (many of which were already raised in the prior motions), the crux of this motion is really a single question: is there a triable issue as to whether the Blocked Assets are owned by Bank Markazi? In the context of the motion to vacate the restraints, Clearstream had stipulated that UBAE had no beneficial interest and the transfer between UBAE and Bank Markazi was unwound. There is no such stipulation on this motion.

For the reasons set forth below, this Court finds that the record evidence is clear and one-sided: there is no triable issue on this question. No rational juror could find that any person or entity—other than Bank Markazi—has a constitutional, beneficial or equitable interest in the Blocked Assets; plaintiffs are therefore entitled to turnover as a matter of law.

Defendants also argue that turnover would run afoul of certain constitutional rights: first, that the specific statutory provision, 22 U.S.C. § 8772 is an invalid legislative act of adjudication that violates Article III; second, that it constitutes an unlawful bill of attainder, U.S. Const. art. I, § 9, cl. 3; third, that turnover would amount to an unconstitutional taking in violation of their due process rights. See U.S. Const. amend. V. None of these arguments has merit.

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[15] As set forth above, plaintiffs have reached agreement regarding priority, as between themselves, of distribution of the assets. Accordingly, the Court does not address any such questions herein.

A. Legal Standard for Summary Judgment

Summary Judgment, as to all or part of a claim, is warranted if the pleadings, the discovery and disclosure materials, along with any affidavits that are admissible, demonstrate that there is no genuine issue of fact necessitating resolution at trial. Fed. R. Civ. P. 56(c); see also *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322–323 (1986). A party moving for summary judgment bears the initial burden of demonstrating that no genuine issue of material fact exists; all reasonable inferences should be drawn in favor of the non-moving party. See *Anderson*, 477 U.S. at 255; *Grady* v. *Affiliated Cent., Inc.*, 130 F.3d 553, 559 (2d Cir. 1997). The burden then shifts to the nonmoving party to come forward with "admissible evidence sufficient to raise a genuine issue of fact for trial in order to avoid summary judgment." See *Jaramillo* v. *Weyerhauser Co.*, 536 F.3d 140, 145 (2d Cir. 2008). Where the non-moving party would bear the ultimate burden of proof on an issue at trial, the moving party satisfies its burden on the motion by pointing to an absence of evidence to support an essential element of the nonmovant's claim. See *Libraire* v. *Kaplan*, CV No. 06-1500, 2008 WL 794973 at *5 (E.D.N.Y. Mar. 24, 2008). Where it is clear that no rational trier of fact could find in favor of the non-moving party, summary judgment is warranted. *Gallo* v. *Prudential Residential Servs., Ltd.*, 22 F.3d 1219, 1223 (2d Cir. 1994). The mere possibility that a dispute may exist, without more, is not sufficient to overcome a convincing presentation by the moving party." *Anderson*, 477 U.S. at 247–48. Mere speculation or conjecture is insufficient to defeat a motion. *W. World Ins. Co.* v. *Stack Oil, Inc.*, 922 F.2d 118, 121 (2d Cir. 1990).

B. Analysis

As stated above, in opposition to this motion, defendants have filled the proverbial kitchen sink with arguments. As the Court has reviewed the thousands of pages of briefing on and in support of these motions, building in a crescendo to the instant motion, it cannot help but be reminded of the grand finale in a Fourth of July fireworks show—all arguments thrown in and set off at once. While this Court has carefully reviewed all of defendants' various arguments, it will not address each of them here.[16] It need not do so because the basic question and the dispositive legal principles do not require descent into those waters—or into that sink, to mix metaphors.

i. The Blocked Assets are Bank Markazi's

Clearstream argues that there are triable issues as to whether Bank Markazi is the "owner of" the Blocked Assets. As with similar arguments made in the context of the motion to dismiss, the arguments made in support of this assertion are based on laws preempted by 22 U.S.C. § 8772.

As noted above, § 8772 requires the Court to determine who—other than an agency or instrumentality of Iran—has a constitutional, beneficial or equitable interest in the assets at issue. None of the defendants cite authority or facts supporting that any entity other than Bank Markazi has such an interest.

On this record and as a matter of law no other entity could have an equitable or beneficial interest. A beneficial interest is "[a] right or expectancy in something as opposed to legal title to that thing." Interest, Black's

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[16] Defendants' UCC, situs of property and Treaty of Amity arguments, in particular, are mooted by the Court's determination with respect to 22 U.S.C. § 8772.

Law Dictionary (9th ed. 2009). The key factor is whether "the property benefitted [the beneficial owner] as if he had received the property directly. See *Exp.-Imp. Bank of U.S.* v. *Asia Pulp & Paper Co., Ltd.*, 609 F.3d 111, 120 (2d Cir. 2010) (citing *United States* v. *Coluccio*, 51 F.3d 337, 341 (2d Cir. 1995)). Clearstream's only role with regard to the Blocked Assets is as the agent of Bank Markazi. Even absent the restraints, it fails to proffer any evidence that it has the right to use or move the Blocked Assets held at Citibank without express permission or direction from Bank Markazi. Nor does Clearstream have equitable title, "a beneficial interest in property [that] gives the holder the right to acquire formal legal title." *Lippe* v. *Genlyte Group Inc.*, 98 CIV 8672(DC), 2002 WL 531010 (S.D.N.Y. Apr. 8, 2002) (citing Black's Law Dictionary 1493 (7th ed. 1999)). Clearstream does not allege—and puts forward no facts—that it has legal title or the right to acquire that title for the Blocked Assets. UBAE disclaims any "legally congnizable interest" in the Citibank proceeds.[17] They are both merely account holders without authority to move or use the assets in the absence of direction. They simply—like Citibank—maintain that account on behalf of another, Bank Markazi.

In addition, Bank Markazi's arguments that it is immune from pre- or post-judgment attachment depend upon preempted provisions of the FSIA. See 22 U.S.C. § 8772(a).

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[17] UBAE admits that it has "no legally cognizable interest" in the restrained bonds. (UBAE SJ Opp. Br. at 2–3.) UBAE thus admits that which plaintiffs wish to prove on summary judgment: there is no issue of material fact as to the ownership of the Markazi Bonds with respect to UBAE (and, as the remainder of the above analysis shows, nor does Clearstream have any such ownership interest).

Bank Markazi has repeatedly insisted that it is the sole beneficial owner of the Blocked Assets. As set forth above, but bears repeating in the context of the Court's analysis of this motion, in various submissions Bank Markazi has asserted that "Over $1.75 billion in securities belonging to Bank Markazi .. are frozen in a custodial Omnibus Account at [Citibank]"; that the "Restrained Securities are the property of Bank Markazi, the Central Bank of Iran", that the "aggregate value of the remaining bond instruments, *i.e.* the Restrained Securities that are the property of Bank Markazi and the subject of the Turnover Action—is thus $1,753 billion"; that the "Restrained Securities are the property of a Foreign Central Bank "; that the "Restrained Securities are presumed to be the property of Bank Markazi"; and "the Restrained Securities are prima facie the property of a third party, Bank Markazi " (See Bank Markazi's First Mem. of L. in Support of its Mot. to Dismiss the Am. Compl., May 11, 2011, ECF No. 18 ("Markazi's First MOL"), at 1, 5, 9, 10, 36 (emphases added).) In addition, two officers of Bank Markazi have sworn under penalty of perjury that the Blocked Assets are the "sole property of Bank Markazi and held for its own account." (Aff. of Gholamossein Arabieh ¶ 2, Vogel Decl. Ex. J, Oct. 17, 2010, ECF No. 210; Aff. of Ali Asghar Massoumi ¶ 2, Vogel Decl. Ex. K, Oct. 17, 2010, ECF No. 210.)

There simply is no other possible owner of the interests here other than Bank Markazi; there is no triable issue of fact.

ii. Constitutional Arguments

Bank Markazi and Clearstream urge that, if this Court determines that the assets are subject to turnover pursuant to § 8772, prior to doing so it must consider whether that statute passes constitutional muster. In this regard, their arguments combine both general constitutional arguments with specific arguments directed at 22 U.S.C. § 8772. As set forth above, § 8772(a)(5) provides that this Court must make a judicial determination as to whether another person has a constitutionally protected interest in the assets. The Court has made such a determination, and no other person has such an interest.

Clearstream and Bank Markazi's various constitutional arguments are without merit.[18]

a. Separation of Powers

First, defendants Clearstream and Bank Markazi argue that, pursuant to Article III of the Constitution, 22 U.S.C. § 8772 is a congressional act violative of the separation of powers. (See Bank Markazi Supp. Mem. of L. in Opp. to Pls.' Mot. for Partial Summ. J. ("Markazi Supp. SJ Br.") at 10–12.) They argue that, in passing § 8772, Congress effectively dictated specific factual findings in connection with a specific litigation—invading the province of the courts. (*Id.*) See *U.S.* v. *Klein*, 80 U.S. 128, 146 (1871) (Congress may not prescribe rules of decision). According to Bank Markazi, the statute's requirement of judicial determinations does not save it since those determinations are "legislative fig lea[ves]" that pre-determine a finding that turnover is required. (Markazi Supp. SJ Br. at 12.)

This argument ignores the structure of the statute. The statute does not itself "find" turnover required; such determination is specifically left to the Court. The statute is not a self-executing congressional resolution of a legal dispute, but rather requires the Court to make determinations regarding (1) whether and to what extent Iran has a beneficial or equitable interest in the assets at issue, and (2) whether constitutionally-protected interest holders other than Iran are present. These determinations are not mere fig leaves; it is quite possible that the Court could have found that defendants raised a triable issue as to whether the Blocked Assets were owned by Iran, or that Clearstream and/or UBAE have some form of beneficial or equitable interest. Any such finding of true third party interest could limit—or even eliminate—turnover (at least at this time). The statute merely "chang[es] the law applicable to pending cases;" it does not "usurp the adjudicative function assigned to the federal courts[.]" See *Axel Johnson, Inc.* v. *Arthur Andersen & Co.*, 6 F.3d 78, 81 (2d Cir. 1993). There is frankly plenty for this Court to adjudicate.

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[18] Plaintiffs have asserted that Clearstream does not itself have standing to raise constitutional challenges because it does not own or even have a beneficial interest in the Blocked Assets. Because none of the constitutional challenges has merit—whether raised by Bank Markazi or Clearstream (and they are raised by both of those defendants)—the Court need not and does not reach the standing issue.

b. Bills of Attainder and Ex Post Facto Law

Similarly, § 8772 does not violate the constitutional prohibition against bills of attainder or ex post facto laws. Bills of attainder exist when a congressional act (1) legislatively determines guilt, and (2) inflicts punishment upon an identifiable individual, (3) without the protections accompanying a trial. See *Nixon* v. *Adm'r of Gen. Servs.*, 433 U.S. 425, 468 (1977). A critical aspect of a bill of attainder is its retrospective nature—classically, defining conduct which has already occurred (and was legal when it occurred) as illegal. *Consol. Edison Co.* v. *Pataki*, 292 F.3d 338, 349 (2d Cir. 2002). In short, it is an ex post facto declaration or finding of guilt by legislative act.

Here, there is no retrospective "punishment" enacted against any defendant. As the Court found above, the financial intermediaries—UBAE and Clearstream—have no constitutional, beneficial, or equitable interest in the assets at issue; thus, it is impossible for seizure of those assets to constitute "punishment" as to them. As to Bank Markazi, now many years ago plaintiffs obtained default judgments as to liability and damages against the Iranian Government. Iran's conduct leading to such determinations was based on established common law principles. Iran's liability and its required payment of damages was therefore established years prior to the 2012 Act. At issue now is merely execution on assets present in this district, in connection with those judgments. Prior to the 2012 Act, the FSIA and TRIA, along with the CPLR, supported restraint and execution against those assets. Section 8772 is thus a legislative act that does not determine "guilt" The law is clear that forbidden legislative punishment is not involved "merely because [the act] imposes burdensome consequences." *Nixon*, 433 U.S. at 742.

Section 8772 is therefore also not backward-looking; it did not change the reasonable expectations of parties as to which assets may be subject to attachment and turnover. Indeed, this litigation regarding attachment of the assets at issue was commenced long before the passage of § 8772.

c. Takings

Nor does the statute effect an unconstitutional taking without just compensation as to either Clearstream or Bank Markazi. The Takings Clause of the Constitution provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amdt. V

Clearstream has no constitutionally protected property interest in the Blocked Assets. It makes a purely legal argument that such an interest arises from its alleged right to payment from Citibank. This argument is without merit. Clearstream is in no different position from Citibank: it is merely a stakeholder without any cognizable interest in the resolution of this dispute on the merits. No doubt it views it necessary for client relations to advocate forcefully against negative impacts to its client's (Bank Markazi) interests, but the fact remains that there is no record evidence that it is acting as anything other than an agent; it does not own the assets at issue.

The cases which Clearstream cites in support of its position do not alter this analysis. For instance, *Lucas* v. *S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992), refers to a taking as extinguishing a property right. *Lucas* related to real property. Of course, Clearstream's interest in the Blocked Assets is one of account entry only—it provides services with respect to assets for its clients, UBAE, on behalf Bank Markazi. Nothing in the record supports that Clearstream could unilaterally choose to use those assets.

The regulatory takings doctrine set forth in *Penn Central Transp. Co.* v. *N.Y.*, 438 U.S. 104, 124 (1978), also cited by Clearstream, is similarly inapposite. There, the Supreme Court found that a regulation—structured in a particular manner—could result in a taking. When faced with such issues, courts are to ask about (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations . and (3) the character of the government action. Clearstream's only argument in support of such a regulatory taking is that as a stakeholder, if the assets are turned over, it might be exposed to claims from Bank Markazi. That is no different from Citibank's position. Clearstream does not have distinct investment-backed expectations—indeed, it cannot use these funds itself. The regulatory structure surrounding turnover provides for ample (and there certainly has been ample) due process in furtherance of an important and reasonable governmental interest in pursuing its national security goals.

Finally, of course, Clearstream's rights and obligations are frankly no different under § 8772 than in the absence of that statute. The statute perhaps allows a court, if it were at the beginning of this process, to weed out baseless arguments. However, the outcome of this matter is neither entirely nor primarily dependent on the existence of § 8772. The combination of the FSIA, TRIA, and E.O. 13599 would lead to the same result. Accordingly, § 8772 cannot be an independent "taking" of that to which Clearstream and UBAE are not entitled and Bank Markazi is no longer entitled.

For that reason Bank Markazi's suggestion that the statute effects a taking *per se*—completely appropriating Markazi's property and depriving it of all economically beneficial use—is incorrect. See *Lucas*, 505 U.S. at 1019. Markazi has no reasonable expectation in the assets at issue because, as the court held in *Hausler II*, once assets are blocked, "parties with interests in those assets have no reasonable expectation that their interests will not be diminished or extinguished."

Nor does § 8772 effect a taking for purely private use. Bank Markazi points out that the U.S. government "may not take the property of A for the sole purpose of transferring it to another private party B, even though A is paid just compensation." *Kelo* v. *City of New London, Conn.*, 545 U.S. 469, 477 (2005). The sole purpose of § 8772, Markazi argues, is to expropriate sovereign property for a purely private purpose. (See Markazi Supp. SJ Br. at 19.)

But the statute does not lack a public purpose. As the Court held in connection with another action seeking turnover of Iranian assets, awarding such assets does not violate the public use requirement where, as here, the Government seeks to address the " 'unusual and extraordinary threat to the national security, foreign policy, and economy of the United States' that . . . Iran poses to the United States." See *In re 650 Fifth Ave. and Related Props.*, 777 F. Supp. 2d 529, 576–77 (S.D.N.Y. 2011) (quoting Exec. Order No. 12957, 60 FR 14615 (March 15, 1995)).

Moreover, even § 8772 requires that this Court make certain judicial determinations prior to ordering turnover: that no party has a constitutional, beneficial or equitable interest in the property at issue. In connection with making these determinations, the Court has allowed many submissions; the many felled trees required for this Court to plow through are evidence of that process.

Finally, Clearstream's argument that turnover would violate Equal Protection also fails. The law is clear that legislation is presumed valid and will be upheld so long as it is reasonably related to a legitimate state interest. See *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). There can be no serious dispute that § 8772 furthers the United States' legitimate interest in furthering its foreign policy with respect to Iran. Clearstream's argument that § 8772 unjustly discriminates against foreign intermediaries fails. The legislation is presumed valid—foreign intermediaries are entitled to no special treatment.

iii. UBAE's Arguments

UBAE is in no different a position—it is another layer of stakeholder trying to shield Bank Markazi from turnover. Nowhere does UBAE assert—nor could it—that it is the true beneficial owner of the Blocked Assets. Indeed, it disclaims any legally cognizable interest. At most, it is a layer in the sandwich built to try and interfere with execution on those assets. Even if UBAE can control the Blocked Assets, that control is irrelevant; it simply fits within E.O. 13599's provision for a person acting "directly or indirectly" on behalf of Iran.

Nor has the notice given UBAE been deficient; it has been served with all motion papers and its counsel have attended the conferences in this action. UBAE makes no additional arguments here that could credibly change the outcome of this motion with respect to it, nor to the other defendants. As a mere agent of Bank Markazi, then, the Blocked Assets held in the name of UBAE are subject to turnover.

iv. Defendants' other arguments against turnover

Defendants' final array of arguments in opposition to this motion were already dispensed with on the basis of § 8772.

Defendants argue that (1) if this Court found that the assets are Bank Markazi's, allowing execution thereon would violate the Treaty of Amity; (2) if the assets are those "of" Bank Markazi, then plaintiffs have failed to demonstrate that there is no triable issue as to whether, under the FSIA § 1611(b)(1), they are assets used for central bank purposes; (3) that Bank Markazi is immune from pre-judgment and post-judgment attachment and that immunity cannot be waived, and (4) a variety of arguments regarding whether the assets are theoretically located in Luxembourg and not New York.

None of these arguments succeed. The Court specifically refers to earlier discussions relating to the arguments above. Section 8772 explicitly states the congressional intent that Iran be held accountable for the judgments against it. Importantly, the statute explicitly refers to those assets at issue in this action. Accordingly, Congress has itself swept aside defendants' final arguments.

On a motion for summary judgment, the Court must determine whether there is a triable issue of fact precluding turnover. As discussed above, there is not. Bank Markazi—the central bank of Iran—has repeatedly asserted it is the sole beneficial owner of the assets. No other party can raise a triable issue as to that, the ultimate question. And on the evidence in this record, no rational juror could find otherwise.

Plaintiffs' motion for partial summary judgment is granted.

VI. BLAND MOTION FOR EXECUTION

As a final matter, the Bland judgment creditors present a motion for execution under 28 U.S.C. § 1610.[19] The Bland group already possesses a § 1610 order, issued October 4, 2012, by the U.S. District Court for the District of Columbia. See Order, *Estate of Steven Bland, et al.* v. *Islamic Republic of Iran, et al.*, 05-cv-2124 (RCL) (D.D.C. Oct. 4, 2012), ECF No. 84. They seek an additional order within this District.

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[19] The Bland creditors are the plaintiffs in *Estate of Steven Bland, et al.* v. *Islamic Republic of Iran, et al.*, 05-cv-2124 (RCL) (D.D.C.).

While the Court expresses no opinion as to the necessity of a § 1610(c) order in a TRIA action,[20] the Bland creditors make a sufficient showing for an order of execution under § 1610(c). That section of FSIA provides for execution of a valid judgment against an instrumentality of a terrorist state where (1) the Court "determine[s] that a reasonable period of time has elapsed following the entry of judgment", and (2) proper "notice required under section 1608(e)" has been given. 28 U.S.C. § 1610(c). Under § 1608(e), a defaulting foreign sovereign must be served in accordance with one of several methods, including "by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state to the Secretary of State" for transmittal via diplomatic note. 28 U.S.C. §§ 1608(a), (e).

The Bland judgment meets both of the § 1610(c) requirements. Claimants present a valid default judgment against Iran dated December 12, 2011. (Bland Mot. for Entry of Order Pursuant to 28 U.S.C. § 1610(c) ("Bland § 1610(c) Mot."), Ex. A, ECF No. 305.) Service on Iran via the Department of State was completed on July 4, 2012, in accordance with 28 U.S.C. § 1608(a). See Aff. of Service, *Estate of Steven Bland, et al.* v. *Islamic Republic of Iran, et al.*, 05-cv-2124 (RCL) (D.D.C. Aug. 13, 2012), ECF No. 82. The Government of Iran has had more than 100 days as of the date of this Opinion and Order in which to respond to the Bland judgment; it has not. This period is reasonable for the purposes of

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[20] The Peterson plaintiffs have argued in separate briefing that no § 1610(c) order is required to execute under TRIA. (See Pls.' Summ. J. Reply at 54–57.) As the Court finds that the requirements of § 1610(c) are met with respect to the Bland creditors, it need not address the order's relevance to TRIA.

§ 1610(c). See, *e.g.*, *Gadsby & Hannah* v. *Socialist Republic of Romania*, 698 F Supp. 483, 486 (S.D.N.Y. 1988) (two months constitutes a "reasonable period of time" under § 1610(c)); *Ferrostaal Metals* v. *S.S. Lash Pacifico*, 652 F. Supp. 420, 423 (S.D.N.Y. 1987) (three months constitutes reasonable time under § 1610(c)).

The Bland creditors' motion for an order of attachment and/or turnover pursuant to 28 U.S.C. § 1610 is granted. They may proceed to collection of the Bland Judgment by attachment and/or execution, or by any other means permitted by applicable law against the assets of the Islamic Republic of Iran and the Iranian Ministry of Information and Security, in accordance with 28 U.S.C. §§ 1610(a), (b).

CONCLUSION

For these reasons and set forth more fully above, the following motions are DENIED:

- UBAE's Motion to Dismiss;
- Clearstream's Motion to Dismiss;
- Bank Markazi's Motion to Dismiss;
- Clearstream's Motion to Vacate the Restraints and Renewed Motion to Vacate the Restraints;

For the reasons set forth above, the following motions are GRANTED:

- Plaintiffs' Motion for Partial Summary Judgment;
- The Bland judgment creditors' motion for execution;

The parties shall confer and jointly and, not later than March 15, 2013, submit a proposed schedule to resolve the remainder of the case. If the parties are unable to agree, they shall set forth in a letter by the same date the matters and issues which they believe remain to be resolved and each party's proposed schedule.

The Clerk of Court is directed to close the motions at ECF Nos. 174, 205, 209, 295, 299 (under seal), 301, and 305 (under seal).

SO ORDERED.

Dated: New York, New York
February 28, 2013

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CASE NO. 18 MISC. 8302

DEBORAH D. PETERSON, Personal Representative of the
Estate of James C. Knipple (Dec.), et al.,
Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN, et al.,
Defendants.

ORDER

JUNE 23, 2009

BARBARA S. JONES, United States District Judge.

The Court issues this order in anticipation of a July 1st, 2009 conference on the issue of Plaintiff's application for leave to serve a second restraining notice or for an order extending the restraining notices previously served upon Citibank and Clearstream.

At that conference, the Court intends to discuss, in addition to Plaintiffs' application, the other motions pending in this case. The Court has come to certain conclusions concerning some but not all of the issues raised in these motions. In the hopes of moving toward a final determination, the Court advises the parties of the following holdings:

The Court agrees with Clearstream that the assets that are the subject of Clearstream's September 4, 2008 motion to vacate restraints are governed by NY UCC 8-122(c). Under the plain meaning of NY UCC 8-112(c), Clearstream is not a proper garnishee. NY UCC 8-112(c) states: "The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained." Clearstream does not currently carry on its books, in relation to the restraints in question, an account in the name of the Islamic Republic of Iran or one of its state agencies.

However, prior to a series of transfers in [redacted] between certain Clearstream accounts (discussed in parties' moving papers), Clearstream may have been a proper garnishee under NY UCC 8-112(c), if at that time the securities account of an Iran state entity was maintained with Clearstream.

Plaintiffs argue that Clearstream is still a proper garnishee, because the [redacted] [redacted] activity related to those accounts was fraudulent and should be set aside (returning the relevant parties to their pre-[redacted] positions).

The restraints will remain in place until the Court has determined whether Clearstream is, or could be made, a proper garnishee, assuming a fraudulent conveyance could be shown by Plaintiffs. Although Plaintiffs and Clearstream submitted briefs discussing the law of fraudulent conveyance, the Court is not able at this time to determine whether or how that law could be applied in this situation. At the July 1st, 2009 conference, the Court intends to discuss with the parties the issues that must be resolved in order for that determination to be made.

Specifically, the Court will make inquiry of the parties on the following issues: 1) Plaintiffs' progress in discovery efforts; 2) whether security entitlements may be "transferred" in a manner susceptible to a fraudulent conveyance analysis; 3) what, if any, badges of fraud surrounded the [redacted] "transfers" challenged by Plaintiffs; 4) what remedies would be proper and viable in the event that a fraudulent conveyance were shown; 5) whether this Court has jurisdiction over the various parties holding an interest in the restrained assets; 6) the applicability of the FSIA; and 7) Plaintiffs' submission of revised subpoena requests in light of this order and those to be made at the July 1st hearing.

SO ORDERED:

Barbara S. Jones
United States District Judge

Dated: New York, New York
June 23, 2009

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DOCKET NO. 13-CV-2952

DEBORAH D. PETERSON, *ET AL.*,
Plaintiffs-Appellees,
v.
ISLAMIC REPUBLIC OF IRAN, *ET AL.*,
Defendants-Appellants.

ORDER

SEPTEMBER 29, 2014

Appellant Bank of Markazi, the Central Bank of Iran, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DOCKET NO. 13-CV-2952

DEBORAH D. PETERSON, *ET AL.*,
Plaintiffs-Appellees,
v.
ISLAMIC REPUBLIC OF IRAN, *ET AL.*,
Defendants-Appellants.

ORDER

OCTOBER 29, 2014

Before: Ralph K. Winter
John M. Walker, Jr.
Jose A. Cabranes,
Circuit Judges.

Appellant Bank of Markazi, the Central Bank of Iran, moves to stay the mandate pending the filing of a petition for a writ of certiorari.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

APPENDIX H

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Bank Markazi, the Central Bank of Iran, was a defendant in the district court and an appellant in the court of appeals.

The following respondents were plaintiffs in the district court and appellees in the court of appeals: Claudine Dunningan, ABC, Deborah D. Peterson, Personal Representative of the Estate of James C. Knipple, Terry Abbott, John Robert Allman, Ronny Kent Bates, James Baynard, Jess W. Beamon, Alvin Burton Belmer, Richard D. Blankenship, John W Blocker, Joseph John Boccia, Jr., Leon Bohannon, John Bonk, Jr., Jeffrey Joseph Boulos, John Norman Boyett, William Burley, Paul Callahan, Mecot Camara, Bradley Campus, Johnnie Cesar, Robert Allen Conley, Charles Dennis Cook, Johnny Len Copeland, David Cosner, Kevin Coulman, Rick Crudale, Russell Cyzick, Michael Devlin, Nathaniel Dorsey, Timothy Dunnigan, Brian Earle, Danny R. Estes, Richard Andrew Fluegel, Michael D. Fulcher, Sean Gallagher, George Gangur, Randall Garcia, Harold Ghumm, Michael Gorchinski, Richard Gordon, Davin M. Green, Thomas Hairston, Mark Anthony Helms, Stanley G. Hester, Donald Wayne Hildreth, Richard Holberton, John Hudson, Maurice Edward Hukill, Edward Iacovino, Jr., Paul Innocenzi, III, James Jackowski, Jeffrey Wilbur James, Nathaniel Walter Jenkins, Edward Anthony Johnston, Steven Jones, Thomas Adrian Julian, Thomas Keown, Daniel Kluck, James C. Knipple, Freas H. Kreischer, III, Keith Laise, James Langon, Michael Scott LaRiviere, Steven LaRiviere, Richard Lemnah, Joseph R. Livingston, III, Paul Lyon, Jr., John Macroglou, Samuel Maitland, Jr., Charlie Robert Martin, David Massa, John

McCall, James E. McDonough, Timothy R. McMahon, Richard Menkins, III, Ronald Meurer, Joseph Peter Milano, Joseph Moore, Harry Douglas Myers, David Nairn, John Arne Olson, Joseph Albert Owens, Connie Ray Page, Ulysses Gregory Parker, John L. Pearson, Thomas S. Perron, John Arthur Phillips, Jr., William Roy Pollard, Victor Mark Prevatt, James Price, Patrick Kerry Prindeville, Diomedes J. Quirante, Warren Richardson, Louis J. Rotondo, Michael Caleb Sauls, Charles Jeffrey Schnorf, Scott Lee Schultz, Peter Scialabba, Gary Randall Scott, Jerryl Shropshire, Larry H. Simpson, Jr., Kirk Hall Smith, William Scott Sommerhof, Stephen Eugene Spencer, William Stelpflug, Horace Renardo Stephens, Jr., Craig Stockton, Jeffrey Stokes, Eric D. Sturghill, Devon Sundar, Thomas Paul Thorstad, Stephen Tingley, Donald H. Vallone, Jr., Eric Glenn Washington, Dwayne Wigglesworth, Rodney J. Williams, Scipio Williams, Jr., Johnny Adam Williamson, William Ellis Winter, Donald Elberan Woollett, Craig Wyche, Jeffrey D. Young, Marvin Albright, Pablo Arroyo, Anthony Banks, Rodney Darrell Burnette, Frank Comes, Glenn Dolphin, Frederick Daniel Eaves, Lilla Woollett Abbey, James Abbott, Elizabeth Adams, Eileen Prindeville Ahlquist, Miralda Alarcon, Anne Allman, DiAnne Margaret Allman, Robert Allman, Margaret E. Alvarez, Kimberly F Angus, Donnie Bates, Johnny Bates, Laura Bates, Margie Bates, Monty Bates, Thomas Bates, Jr., Estate of Mary Abbott, Estate of Theodore Allman, Charles Frye, Truman Dale Garner, Larry Gerlach, John Hlywiak, Orval Hunt, Joseph P Jacobs, Brian Kirkpatrick, Burnham Matthews, Timothy Mitchell, Jeffrey Nashton, John Oliver, Paul Rivers, Stephen Russell, Dana Spaulding, Craig Joseph Swinson, Michael Toma, Danny Wheeler, Thomas D. Young, Thomas C. Bates, Sr., Mary E. Baumgartner, Anthony Baynard, Barry

Baynard, Emerson Baynard, Philip Baynard, Thomasine Baynard, Timothy Baynard, Stephen Baynard, Wayne Baynard, Anna Beard, Mary Ann Beck, Alue Belmer, Annette Belmer, Clarence Belmer, Colby Keith Belmer, Denise Belmer, Donna Belmer, Faye Belmer, Kenneth Belmer, Luddie Belmer, Shawn Biellow, Mary Frances Black, Donald Blankenship, Jr., Donald Blankenship, Sr., Alice Blocker, Douglas Blocker, John R. Blocker, Robert Blocker, James Boccia, Joseph Boccia, Sr., Patricia Boccia, Raymond Boccia, Richard Boccia, Ronnie Boccia, Leticia Boddie, Angela Bohannon, Anthony Bohannon, Carrie Bohannon, David Bohannon, Edna Bohannon, Leon Bohannon, Sr., Ricki Bohannon, Billie Jean Bolinger, Joseph Boulos, Lydia Boulos, Estate of Mary Blackenship, Marie Boulos, Rebecca Bowler, Lavon Boyett, Theresa U. Roth-Boyett, William A. Boyett, Estate of Norman E. Boyett, Jr., Damion Briscoe, Christine Brown, Rosanne Brunette, Rosanne Buckner, Mary Lynn Buckner, Myra Burley, Kathleen Calabro, Rachel Caldera, Estate of Claude Burley, Estate of William Douglas Burley, Susan Schnorf Breeden, Avenell Callahan, Michael Callahan, Patricia Calloway, Elisa Rock Camara, Theresa Riggs Camara, Candace Campbell, Clare Campus, Elaine Capobianco, Florene Martin Carter, Phyllis A. Cash, Theresa Catano, Bruce Ceasar, Franklin Ceasar, Frederick Ceasar, Robbie Neil Ceasar, Sybil Ceasar, Christine Devlin Cecca, Tammy Chapman, James Cherry, Sonia Cherry, Adele H. Chios, Jana M. Christian, Sharon Rose Christian, Susan Ciupaska, Leshune Stokes Clark, Rosemary Clark, Mary Ann Cobble, Karen Shipp Collard, Jennifer Collier, Melia Winter Collier, Deborah M. Coltrane, James N. Conley, Jr., Roberta Li Conley, Charles F Cook, Elizabeth A. Cook, Alan Tracy Copeland, Betty Copeland, Blanche Corry, Harold Cosner, Jeffrey Cosner, Leanna Cosner, Cheryl Cossaboom, Bryan Thomas Coulman, Christopher J. Coulman, Dennis P. Coulman, Lorraine M. Coulman, Robert D. Coulman, Charlita Martin Covington, Amanda Crouch, Marie Crudale, Eugene Cyzick, Lynn Dallachie, Anne Deal, Lynn Smith Derbyshire, Theresa Desjardins, Christine Devlin, Daniel Devlin, Gabrielle Devlin, Richard Devlin, Sean Devlin, Rosalie Milano Donahue, Ashley Doray, Rebecca Doss, Chester Dunnigan, Elizabeth Ann Dunningan, Michael Dunningan, William Dunningan, Janice Thorstad Edquist, Mary Ruth Ervin, Estate of Marva Lynn Cosner, Estate of Mary A. Cook, Barbara Estes, Charles Estes, Frank Estes, Angela Dawn Farthing, Arlington Ferguson, Lori Fransler, Estate of James Gallagher, Estate of Jediah Ghumm, Hilton Ferguson, Linda Sandback Fish, Nancy Brocksbank Fox, Tia Fox, Tammy Freshour, Ruby Fulcher, Barbara Gallagher, Brian Gallagher, James Gallagher, Jr., Kevin Gallagher, Michael Gallagher, Dimitri Gangur, Mary Gangur, Jess Garcia, Ronald Garcia, Roxanne Garcia, Russell Garcia, Violet Garcia, Suzanne Perron Garza, Jeanne Gattegno, Arlene Ghumm, Ashley Ghumm, Bill Ghumm, Edward Ghumm, Hildegard Ghumm, Jesse Ghumm, Leroy Ghumm, Moronica Ghumm, Donald Giblin, Jeanne Giblin, Michael Giblin, Tiffany Giblin, Valerie Giblin, William Giblin, Thad Gilford-Smith, Rebecca Gintonio, Dawn Goff, Christina Gorchinski, Judy Gorchinski, Kevin Gorchinski, Valerie Gorchinski, Alice Gordon, Joseph Gordon, Estate of Norris Gordon, Estate of Samuel Hudson, Linda Gordon, Paul Gordon, Andrea Grant, Deborah Graves, Deborah Green, Liberty Quirante Gregg, Alex Griffin, Catherine E. Grimsley, Megan Grummer, Lyda Woollett Guz, Darlene Hairston, Tara Hanrahan, Mary Clyde Hart, Jeffrey Haskell, Brenda Haskill, Kathleen S. Hedge, Christopher Todd Helms, Marvin R. Helms, Doris Hester, Clifton Hildreth, Julia Hildreth, Mary Ann Hildreth, Michael Wayne Hildreth, Sharon A. Hilton, Donald Holberton, Patricia Lee Holberton, Thomas Holberton, Tangie Hollifield, Debra Horner, Elizabeth House, Joyce A. Houston, Tammy Camara Howell, Lisa H. Hudson, Lorenzo Hudson, Lucy Hudson, Ruth Hudson, William J. Hudson, Estate of Edward Iacovino Sr., Estate of Susan Thorstad Hudson, Nancy Tingley Hurlburt, Cynthia Perron Hurston, Estate of John D. Knipple, Estate of Pauline Knipple, Estate of Synovure Jones, Elizabeth Iacovino, Deborah Innocenzi, Kristin Innocenzi, Mark Paul Innocenzi, IV, Bernadette Jaccom, John Jackowski, Sr., John Jackowski, Jr., Victoria Jacobus, Elaine James, Nathalie C. Jenkins, Stephen Jenkins, Linda Martin Johnson, Ray Johnson, Rennitta Stokes Johnson, Sherry Johnson, Charles Johnston, Edwin Johnston, Mary Ann Johnston, Zandra LaRiviere Johnston, Alicia Jones, Corene Martin Jones, Kia Briscoe Jones, Mark Jones, Ollie Jones, Sandra D. Jones, Robin Copeland Jordan, Susan Scott Jordan, Joyce Julian, Karl Julian, Nada Jurist, Adam Keown, Bobby Keown, Sr., Darren Keown, William Keown, Mary Joe Kirker, Kelly Kluck, Michael Kluck, John R. Knipple, Shirley L. Knox, Doreen Kreischer, Freas H. Kreischer, Jr., Cynthia D. Lake, Estate of Clarence Lemnah, Estate of Richard G. LaRiviere, Eugene LaRiviere, Janet LaRiviere, John M. LaRiviere, Lesley LaRiviere, Michael LaRiviere, Nancy LaRiviere, Richard LaRiviere, Robert LaRiviere, William LaRiviere, Wendy L. Lange, James Langon, III, Cathy L. Lawton, Heidi Crudale LeGault, Etta Lemnah, Fay Lemnah, Harold Lemnah, Marlys Lemnah, Robert Lemnah, Ronald Lemnah, Annette R. Livingston, Estate of Joseph R. Livingston, Joseph R. Livingston, IV, Robin M. Lynch, Earl Lyon, Francisco Lyon, June Lyon, Maria Lyon, Paul D. Lyon, Sr., Valerie Lyon, Heather Macroglou, Kathleen Devlin Mahoney, Kenty Maitland, Leysnal Maitland, Samuel Maitland, Sr., Shirla Maitland, Virginia Boccia Marshall, John Martin, Pacita Martin, Renerio Martin, Ruby Martin, Shirley Martin, Mary Mason, Cristina Massa, Estate of Campbell J. Nairn, Estate of Michael Moore, Estate of Thomas McCall, Edmund Massa, Joao Massa, Jose Massa, Manuel Massa, Jr., Ramiro Massa, Mary McCall, Valerie McCall, Gail McDermott, Julia A. McFarlin, George McMahon, Michael McMahon, Patty McPhee, Darren Menkins, Gregory Menkins, Margaret Menkins, Richard H. Menkins, Jay T. Meurer, John Meurer, Michael Meurer, John Thomas Meurer, Mary Lou Meurer, Penny Meyer, Angela Milano, Peter Milano, Jr., Earline Miller, Henry Miller, Patricia Miller, Helen Montgomery, Betty Moore, Harry Moore, Kimberly Moore, Mary Moore, Melissa Lea Moore, Elizabeth Phillips Moy, Debra Myers, Geneva Myers, Harry A. Myers, Billie Ann Nairn, Campbell J. Nairn, Jr., William P Nairn, Richard Norfleet, Deborah O'Connor, Estate of Barbara D. Prindeville, Estate of Bertha Olson, Estate of James Owens, Estate of Sigurd Olson, Pearl Olaniji, Karen L. Olson, Randal D. Olson, Roger S. Olson, Ronald J. Olson, David Owens, Deanna Owens, Frances Owens, Steven Owens, Connie Mack Page, Judith K. Page, Lisa Menkins Palmer, Geraldine Paolozzi, Maureen Pare, Henry James Parker, Sharon Parker, Helen M. Pearson, John L. Pearson, Sr., Sonia Pearson, Brett Perron, Deborah Jean Perron, Michelle Perron, Ronald R. Perron, Muriel Persky, Sandra Petrick, Sharon Conley Petry, Donna Vallone Phelps, Harold Phillips, John Arthur Phillips, Sr., Donna Tingley Plickys, Margaret Aileen Pollard, Stacey Yvonne Pollard, Lee Hollan Prevatt, Victor Thornton Prevatt, John Price, Joseph Price, Kathleen Tara Prindeville, Michael Prindeville, Paul Prindeville, Sean Prindeville, Estate of Godofredo Quirante, Estate of Larry L. Scott, Belinda J.

Quirante, Edgar Quirante, Milton Quirante, Sabrina Quirante, Susan Ray, Laura M. Reininger, Alan Richardson, Clarence Richardson, Eric Richardson, Lynette Richardson, Vanessa Richardson, Philiece Richardson-Mills, Melrose Ricks, Belina Quirante Riva, Barbara Rockwell, Linda Rose Rooney, Tammi Ruark, Juliana Rudkowski, Marie McMahon Russell, Alicia Lynn Sanchez, Andrew Sauls, Henry Caleb Sauls, Riley A. Sauls, Margaret Medler Schnorf, Richard Schnorf, brother, Richard Schnorf, father, Robert Schnorf, Beverly Schultz, Dennis James Schultz, Dennis Ray Schultz, Frank Scialabba, Jacqueline Scialabba, Samuel Scott Scialabba, Jon Christopher Scott, Kevin James Scott, Mary Ann Scott, Sheria Scott, Stephen Allen Scott, Jacklyn Seguerra, Bryan Richard Shipp, James David Shipp, Tara Smith, Estate of Angela Josephine Smith, Janice Shipp, Maurice Shipp, Pauline Shipp, Raymond Dennis Shipp, Russell Shipp, Susan J. Sinsioco, Bobbie Ann Smith, Cynthia Smith, Donna Marie Smith, Erma Smith, Holly Smith, Ian Smith, Janet Smith, Joseph K. Smith, Jr., Kelly B. Smith, Shirley L. Smith, Tadgh Smith, Terrence Smith, Timothy B. Smith, Ann Smith-Ward, Jocelyn J. Sommerhof, John Sommerhof, William J. Sommerhof, Douglas Spencer, Christy Williford Stelpflug, Joseph Stelpflug, Estate of Donald Stockton, Estate of Nelson Stokes Senior, Kathy Nathan Stelpflug, Laura Barfield Stelpflug, Peggy Stelpflug, William Stelpflug, Horace Stephens, Sr., Joyce Stephens, Keith Stephens, Dona Stockton, Richard Stockton, Irene Stokes, Nelson Stokes, Jr., Richard Stokes, Robert Stokes, Gwenn Stokes-Graham, Sturghill D. Sturghill, Marcus L. Sturghill, Jr., NaKeisha Lynn Sturghill, Doreen Sundar, Margaret Tella, Susan L. Terlson, Mary Ellen Thompson, Adam Thorstad, James Thorstad, James Thorstad, Jr., James Thorstad, Sr., Ryan Thorstad, Betty Ann

Thurman, Barbara Tingley, Richard L. Tingley, Russell Tingley, Keysha Tolliver, Mary Ann Turek, Karen Valenti, Anthony Vallone, Donald H. Vallone, Timothy Vallone, Leona Mae Vargas, Denise Voyles, Ila Wallace, Kathyrn Thorstad Wallace, Richard J. Wallace, Barbara Thorstad Warwick, Linda Washington, Vancine Washington, Kenneth Watson, Diane Whitner, Darrin A. Wigglesworth, Daryl Wigglesworth, Henry Wigglesworth, Mark Wigglesworth, Robyn Wigglesworth, Sandra Wigglesworth, Shawn Wigglesworth, Dianne Stokes Williams, Gussie Martin Williams, Janet Williams, Rhonda Williams, Ronald Williams, Johnny Williamson, Jamaal Muata Ali, Ruth Williams, Scipio J. Williams, Delma Williams-Edwards, Jewelene Williamson, Tony Williamson, Michael Winter, Wiseman Wiseman, Phyllis Woodford, Joyce Woodle, Beverly Woolett, Paul Woolett, Melvina Stokes Wright, Patricia Wright, Glenn Wyche, John Wyche, John F. Young, John W. Young, Sandra Rhodes Young, Joanne Zimmerman, Stephen Thomas Zone, Patricia Thorstad Zosso, Margaret Angeloni, Jesus Arroyo, Milagros Arroyo, Olympia Carletta, Kimberly Carpenter, Christopher Comes, Frank Comes, Sr., Joan Comes, Patrick Comes, Deborah Crawford, Barbara Davis, Alice Warren Franklin, Megan Gerlach, Patricia Gerlach, Travis Gerlach, Arminda Hernandez, Margaret Hlywiak, Joseph Hlywiak, Paul Hlywiak, Peter Hlywiak, Jr., Peter Hlywiak, Sr., Cynthia Lou Hunt, Rosa Ibarro, Estate of Alex W. Nashton, Estate of James Otis Moore, Estate of Johnney S. Moore, Andrew Scott Jacobs, Daniel Joseph Jacobs, Danita Jacobs, Kathleen Kirkpatrick, Grace Lewis, Lisa Magnotti, Wendy Mitchell, Marvin S. Moore, Jonnie Mae Moore-Jones, Ashley E. Oliver, Kayley Oliver, Michael John Oliver, Patrick S. Oliver, Paul Oliver, Riley Oliver, Tanya Russell, Wanda Russell, Estate of Ingrid M. Swinson, Estate of Kenneth J. Swinson, Estate of Marlis Molly Wheeler, Scott Spaulding, Cecilia Stanley, Kelly Swank, Daniel Swinson, Dawn Swinson, Teresa Swinson, William Swinson, Bronzell Warren, Jessica Watson, Audrey Webb, Benjamin Wheeler, Brenda June Wheeler, Jonathan Wheeler, Kerry Wheeler, Jill Wold, Estate of Nora Young, Estate of Robert Young, James Young, Yekutiel Wultz, Estate of Daniel Wultz, Sheryl Wultz, Yekutiel Wultz, Amanda Wultz, Paul Martinez, Sr., Timothy Giblin.

The following respondents were respondents in the district court and appellees in the court of appeals: David Kirschenbaum, Isabelle Kirschenbaum, Jason Kirschenbaum, Joshua Kirschenbaum, Danielle Lynn Teitlebaum, Anna Beer, Harry Beer, Estelle Carroll, Phyllis Maisel.

The following respondents were defendants in the district court and appellees in the court of appeals: William Adams, Catherine Adams, Kendall K. Kitson, Jr., Christopher R. Nguyen, Che G. Colson, Estate of Michael Heiser, Francis Heiser, Gary Heiser, Estate of Justin R. Wood, Estate of Leland Timonthy Haun, Ibis S. Haun, Senator Haun, Milagritos Perez-Dalis, Anthony W. Cartrette, Lewis W. Cartrette, Denise M. Eichstaedt, Estate of Brian McVeigh, Estate of Earl F. Cartrette, Jr., James V. Wetmore, Sandra M. Wetmore, Bridget Brooks, Mary Young, Timothy Woody, Jonica L. Woody, Dawn Woody, Elizabeth Wolf, Daniel Adams, John E. Adams, Michael T. Adams, Patrick D. Adams, Bernadine R. Beekman, George M. Beekman, Starlina D. Taylor, Lawrence Taylor, Tracy M. Smith, James R. Rimkus, Anne M. Rimkus, Sharon Marthaler, Matthew Marthaler, Kirk Marthaler, Katie L. Marthaler, Herman C. Marthaler, III, Judy Lester, Jessica F. Lester, Cecil H. Lester, Jr., Cecil H. Lester, Steve K. Kitson, Nancy Kitson, Nancy A. Kitson.

The following respondents were third-party defendants in the district court and appellees in the court of appeals: Michael Morgera Thomas Morgera, Thaddeus C. Fennig.

The following respondents were third-party defendants, cross-claimants, and counter-claimants in the district court and appellees in the court of appeals: Jeremy Levin, Dr. Lucille Levin.

The following respondents were third-party defendants and cross-defendants in the district court and appellees in the court of appeals: Carlos Acosta, Maria Acosta, Estate of Judith Greenbaum, Steven M. Greenbaum, Estate of Millard D. Campbell, Kathleen M. Wood, Shawn M. Wood, , Bessie A. Campbell, Estate of Brent E. Marthaler, Bruce Johnson, Catherine Fennig, Estate of Christopher Lester, Estate of Joshua E. Woody, Estate of Kendall Kitson, Jr., Kevin Johnson, a minor, Estate of Kevin J. Johnson, Laura E. Johnson, Mark Fennig, Estate of Patrick Fennig, a minor, Estate of Patrick Fennig, Paul D. Fennig, Shyrl L. Johnson, Estate of Thanh Van Nguyen, Estate of Christopher Adams, Marie R. Campbell, Estate of Peter J. Morgera, Kendall K. Kitson, Irving Franklin, Estate of Binyamin Kahane, Tova Ettinger, Estate of Irma Franklin, Libby Kahane, Norman Kahane, Estate of Meir Kahane, Ethel J. Griffin, Shirlee Hayman, Baruch Kahane, Ciporah Kaplan, Alan Hayman, Sonia Kahane, Estate of Jeremy Taylor, Estate of Joseph E. Rimkus, Angel Alvarado, Geraldo Alvarado, Grisselle Alvarado, Luis Alvarado, Luisa Alvarado, Maria Alvarado, Marta Alvarado, Pedro Alvarado, Jr., Yolanda Alvarado, Zoraida Alvarado, Dennis Jack Anderson, Cheryl Bass, Catherine Bonk, John Bonk, Sr., Kevin Bonk, Thomas Bonk, Catherine Bonk Huny, Edward J. Brooks, Patricia A. Brooks, Timothy Brooks, Marion

DiGiovanni, Estate of James Silvia, Sherry Lynn Fiedler, Marilou Fluegel, Robert Fluegel, Thomas A. Fluegel, Wanda Ford, Evans Hairston, Felicia Hairston, Julia Bell Hairston, Bennie Harris, Michael Harris, Henry Durban Hukill, Mark Andrew Hukill, Matthew Scott Hukill, Melissa Hukill, Meredith Ann Hukill, Mitchell Charles Hukill, Monte Hukill, Virginia Ellen Hukill, Storm Jones, Penni Joyce, Carl Kirkwood, Sr., Carl A. Kirkwood, Jr., Jeff Kirkwood, Shirley Kirkwood, Patricia Kronenbitter, Betty Laise, Bill Laise, Kris Laise, Bill Macgroglou, James Macgroglou, Lorraine Macgroglou, Kathy McDonald, Edward J. McDonough, Edward W. McDonough, Sean McDonough, Marcy Lynn Parson, Donald R. Pontillo, Deborah Rhosto, Don Selbe, Eloise F Selbe, John E. Selbe, Anna Marie Simpson, Larry Simpson, Sr., Renee Eileen Simpson, Robert Simpson, Belinda Skarka, Lynne Michol Spencer, Allison Thompson, Ifaline Thompson, Johnny Thompson, Willy G. Thompson, Deborah True, Janice Valore, Orlando M. Valore, Jr., Orlando Michael Valore, Sr., Terance J. Valore, Sally Jo Wirick, Richard W. Wood, Vicki L. Taylor.

The following parties were third-party defendants in the district court: Gary Robert Owens, James Owens, Frank B. Pressley, Jr., David A. Pressley, Michael F. Pressley, Thomas C. Pressley, Yasemin B. Pressley, Montine Bowen, Sundus Buyuk, Bahar Buyuk, Berk F. Pressley, Frank Pressley, Sr., Jon B. Pressley, Marc Y. Pressley, Donald Bomer, Ellen Marie Bomer, Ahme Buyuk, Serpil Buyuk, Tulay Buyuk, Alexandra Cormier, Andrew John William Cormier, Michael James Cormier, Dorothy Willard, Cheryl L. Blood, Patricia K. Fast, Patricia Feore, Alice M. Hirn, Clyde M. Hirn, Inez P. Hirn, Bret W. Reed, Joyce Reed, Worley Lee Reed, Tabitha Carter, Lorie Gulick, Julita A. Qualico, Howard Sparks, Howard Sparks, Jr., Leslie Lydia Sparks, Michael Ray Sparks, Gary O. Spiers, Victoria Q. Spiers, Victoria J. Spiers, Flossie Varney, Linda Jane Whiteside, Ruth Ann Whiteside, Pam Williams, Renay Frym, Stuart E. Hersh, Abraham Mendelson, Daniel Miller, Elena Rozenman, Noam Rozenman, Tzvi Rozenman, Jenny Rubin, Juanita R. Goldfarb, Mary V. Hernandez, Robert Tishmack, Jr., Akili Musupape, Debora Donti Mwaipape, Donte Akili Mwaipape, Donti Akili Mwaipape, Elisha Donti Mwaipape, Joseph Donti Mwaipape, Nko Donti Mwaipape, Victoria Donti Mwaipape, Judith Abasi Mwila, Adabeth Said Nang'Oko, Hanuni Ramadhani Ndange, Alli Kindamba Ng'Ombe, Mohamed Alli Ng'Ombe, Kindamba Alli Ng'Ombe, Robin Nicely, Celia Walker, Dorothy C. Wint, Jutta Yarber, Floyd Carpenter, Rose Harris, Douglas Pontillo, Floyd Martin Carpenter, Andrea Ciarla, Phyllis Santoserra, John Opatovsky, Jean Givens Owen, Steven G. Owen, Albert Page, Janet Page, David Penosky, Joseph Penosky, Christian R. Rauch, John Brown, Estate of Burton Wherland, Rowel Brown, Estate of Jeffrey Bruce Owen, Sulba Brown, Estate of Michael Lee Page, Vara Brown, Sarah Wherland, David Burns, Sharon Davis, Eugene Burns, Rodney E. Burns, Daniel Cuddeback, Jr., Daniel Cuddeback, Sr., John R. Cuddeback, Marvine McBride, Ann Marie Moore, Jeannie Scaggs, Charles F. West, LaJuana Smith, Charles H. West, Estate of Anthony Brown, Rick West, Angela Yoak, Gregory Wherland, Louise Gaddo Blatter, Kimmy Wherland, Barbara Cuddeback, Robert Dean, Michael Episcopo, Peter Gaddo, Randy Gaddo, Timothy Gaddo, Estate of William R. Gaines, Michael A. Gaines, William R. Gaines, Sr., Gloria Hamilton, Carolyn Spears, Mark Spears, Eveyln Sue Spears Elliot, Estate of Virgel Hamilton, Carol Weaver, Lorreta Brown, Bruce Hastings, Kathy Hodges, Maynard Hodges, Cindy Holmes, Daniel

Joy, Sean Kirkpatrick, Daniel Kremer, Joseph T. Kremer, Dorothy C. Wint, Shana Saul, Pam Williams, Jacqueline Stahrr, Betty Lewis, Jeanette Dougherty, Jerry L. Lewis, Christopher Hein, Scott M. Lewis, Estate of Laura Virginia Copeland, Estate of Christine Kremer, Estate of David A. Lewis, Estate of Thomas Kremer, Teresa Gunterh, Dorothy C. Wint, Alphonso Martinez, Leonora Pontillo, Daniel Martinez, Michael Martinez, Paul Martinez, Jr., Tomasita L. Martinez, Esther Martinez Parks, Susanne Yeoman, Joyce Clifford, Alexandra Rain Cormier, Robert Muffler, Jr., Ronald L. Tishmack, Tova Ettinger, Estate of Binyamin Kahane, Estate of Irma Franklin, Irving Franklin, Baruch Kahane, Dudley Decker, Ida Decker, Johnnie Decker, Sidney Decker, Ronald Duplanty, Estate of Frank Bland, Carolyn Mudd, Estate of Benjamin E. Fuller, Estate of Sean F Ester, Keith Estler, Louis Estler, Jr., Mary Ellen Estler, Ernest C. Fuller, Holly Gibson, John Gibson, Maurice Gibson, Estate of Michael Hastings, Estate of Paul Hein, Joyce Hastings, Jo Ann Hein, Victor J. Hein, Karen Hein-Sullivan, Jacqueline M. Kunysz, Estate of Bruce Hollingshead, Estate of John Hendrickson, Estate of Michael Robert Massman, Nicole Gomez, John Hendrickson, Tyson Hendrickson, Melinda Hollingshead, Barbara Goff, Renard Manley, Deborah Ryan, Estate of Louis Melendez, Angela Massman, Kristopher Massman, Lydia Massman, Douglas Jason Melendez, Zaida Melendez, Patricia Lou Smith, Estate of Billy San Pedro, Estate of Juan C. Rodriguez, Estate of Michael Mercer, Johnny Melendez, Johnny Melendez, Jr., Sarah Mercer, Samuel Palmer, Louisa Punonet, Robert Rucker, Estate of James Surch, Cesar San Pedro, Guillermo San Pedro, Javier San Pedro, Sila V San Pedro, Thurnell Shields, Emanuel Simmons, Will Surch, Bradley Ulick, Estate of Eric Walker, Marilyn Peterson, Tena Walker-Jones, Anson Edmond, Arnold Edmond, Hazel Edmond, Estate of Obrian Weekes, Ronald E. Walker, Ronald Walker, Jr., Galen Weber, Wendy Edmond, Estate of Dennis Lloyd West, Estate of John Weyl, Faith Weekes, Ianthe Weekes, Keith Weekes, Meta Weekes, Kathy West, Morgan W. Rowan, Sharon J. Rowan, Nelson Weyl, Luis Rotondo, Rose Rotondo.

The following parties were cross-defendants in the district court: Andres Alvarado Tull, Alan C. Anderson, Michael Anderson, Thelma Anderson, Kelly Bachlor, Angela E. Barile, Joseph A. Barile, Michael Barile, John Becker, Elaine Allen, Patty Barnett, James Bland, Ruth Ann Bland, Stephen Boyd Bland, DEF, James S. Spears, Happiness Mathew Rutaheshelwa, Eric Mathew Rutaheshelwa, Enoc Mathew Rutaheshelwa, Elizabeth Mathew Rutaheshelwa, Edward Mathew Rutaheshelwa, Angelina Mathew Rutaheshelwa, Deborah Rubin, Kulwa Ramadhani, Steven G. Owen, Shabani Saidi Mtulya, Angelina Mathew-Ferix, Samual Thomas Marcus, Coronella Samuel Marcus, Cecilia Samuel Marcus, Dorothy C. Wint, Estate of William R. Gaines, Jr., Frank B. Pressley, Jr., Johnny Melendez, Jr., Venant Valentine Mathe Katunda, Veidiana Valentine Katunda, Valentine Mathew Katunda, Edwine Valentine Mathe Katunda, Diana Valentine Katunda, Deisery Valentine Mathe Katunda, Abella Valentine Katunda, Mathew Ferix, Estate of Yusef Shamte Ndange, Estate of Wengo Ramadhani, Estate of Veronica Alois Saidi, Estate of Upemdo Ramadhani, Estate of Selina Rogath Saidi, Estate of Saidi Shabani Mtuyla, Estate of Rogath Saidi Saidi, Estate of Patrick Fennig, Estate of Mwajabu Yusuph Shamte Ndange, Estate of Mtendeje Rajabu, Estate of Majaliwa Ramadhani, Estate of Kassim Ramadhani, Estate of Juma Yusuph Shamte Ndange, Estate of John Rogath Saidi, Estate of

Idifonce Rogath Saidi, Estate of Dotio Rmadhani, Estate of Daniel Rogath Saidi, Estate of Aisha Mawazo, Estate of Abdul Shabani Mtuyla, Estate of Abdu Yusuph Shamte Ndange, Loretta Brown, Catherine Bonk Huny, Ellen Marie Bomer, Monica Akili.

The following parties were defendants in the district court: The Islamic Republic of Iran, Citibank, N.A., John Bonk, Sr., Leonard Paul Tice, Robin Brock, Mary Jean Hodges, Clearstream Banking, S.A., Banca UBAE S.p.A.

APPENDIX I

RELEVANT CONSTITUTIONAL, STATUTORY, AND TREATY PROVISIONS

1. Article III of the United States Constitution provides:

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; —between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

2. Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1214, 1258, as codified at 22 U.S.C. § 8772, provides:

§ 8772. Interests in certain financial assets of Iran

(a) Interests in blocked assets

(1) In general

Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law, a financial asset that is—

(A) held in the United States for a foreign securities intermediary doing business in the United States;

(B) a blocked asset (whether or not subsequently unblocked) that is property described in subsection (b); and

(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad,

shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, or hostage-taking, or the provision of material support or resources for such an act.

(2) Court determination required

In order to ensure that Iran is held accountable for paying the judgments described in paragraph (1) and in furtherance of the broader goals of this Act to sanction

Iran, prior to an award turning over any asset pursuant to execution or attachment in aid of execution with respect to any judgments against Iran described in paragraph (1), the court shall determine whether Iran holds equitable title to, or the beneficial interest in, the assets described in subsection (b) and that no other person possesses a constitutionally protected interest in the assets described in subsection (b) under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds—

(A) equitable title to, or a beneficial interest in, the assets described in subsection (b) (excluding a custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran); or

(B) a constitutionally protected interest in the assets described in subsection (b),

such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein and to the extent such execution or attachment does not infringe upon such constitutionally protected interest.

(b) Financial assets described

The financial assets described in this section are the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings, as modified by court order dated June 27, 2008, and extended by court orders dated June 23, 2009, May 10, 2010, and June 11, 2010, so long as such assets remain restrained by court order.

(c) Rules of construction

Nothing in this section shall be construed—

(1) to affect the availability, or lack thereof, of a right to satisfy a judgment in any other action against a terrorist party in any proceedings other than proceedings referred to in subsection (b); or

(2) to apply to assets other than the assets described in subsection (b), or to preempt State law, including the Uniform Commercial Code, except as expressly provided in subsection (a)(1).

(d) Definitions

In this section:

(1) Blocked asset

The term "blocked asset"—

(A) means any asset seized or frozen by the United States under section 5(b) of the Title 50, Appendix or under section 1701 or 1702 of Title 50; and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of the license has been specifically required by a provision of law other than the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) or the United Nations Participation Act of 1945 (22 U.S.C. 287 *et seq.*); or

(ii) is property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the laws of the United States, and is being used exclusively for diplomatic or consular purposes.

(2) Financial asset; securities intermediary

The terms "financial asset" and "securities intermediary" have the meanings given those terms in the Uniform Commercial Code, but the former includes cash.

(3) Iran

The term "Iran" means the Government of Iran, including the central bank or monetary authority of that Government and any agency or instrumentality of that Government.

(4) Person

(A) In general

The term "person" means an individual or entity.

(B) Entity

The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

(5) Terrorist party

The term "terrorist party" has the meaning given that term in section 201(d) of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note).

(6) United States

The term "United States" includes all territory and waters, continental, or insular, subject to the jurisdiction of the United States.

3. The Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891, as amended and codified at 28 U.S.C. §§ 1602 *et seq.* provides:

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

§ 1603. Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state

may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the

vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

(e), (f) Repealed.

(g) LIMITATION ON DISCOVERY.—

(1) IN GENERAL.—(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) SUNSET.—(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would—

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) EVALUATION OF EVIDENCE.—The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) BAR ON MOTIONS TO DISMISS.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

§ 1605A. Terrorism exception to the jurisdictional immunity of a foreign state

(a) IN GENERAL.—

(1) NO IMMUNITY.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

(2) CLAIM HEARD.—The court shall hear a claim under this section if—

(A)(i)(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS) in the United States District Court for the District of Columbia.

(b) LIMITATIONS.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) PRIVATE RIGHT OF ACTION.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) ADDITIONAL DAMAGES.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) SPECIAL MASTERS.—

(1) IN GENERAL.—The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) TRANSFER OF FUNDS.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) APPEAL.—In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) PROPERTY DISPOSITION.—

(1) IN GENERAL.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) NOTICE.—A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3) ENFORCEABILITY.—Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h) DEFINITIONS.—For purposes of this section—

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

(a) for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other lia-

bility or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of

section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign

Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which para-

graph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwith-

standing any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

4. Section 201 of the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322, 2337, as amended and reproduced at 28 U.S.C. § 1610 note, provides:

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b) [of this note], in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

(b) PRESIDENTIAL WAIVER.—

(1) IN GENERAL.—Subject to paragraph (2), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of subsection (a) [of this note] in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(2) EXCEPTION.—A waiver under this subsection shall not apply to—

(A) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used by the United States for any nondiplomatic purpose (including use as rental property), or the proceeds of such use; or

(B) the proceeds of any sale or transfer for value to a third party of any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(d) DEFINITIONS.—In this section [this note] the following definitions shall apply:

(1) ACT OF TERRORISM.—The term "act of terrorism" means—

(A) any act or event certified under section 102(1) [Pub. L. 107-297, Title I, § 102(1), Nov. 26, 2002, 116 Stat. 2323, which is set out in a note under 15 U.S.C.A. § 6701]; or

(B) to the extent not covered by subparagraph (A), any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))).

(2) BLOCKED ASSET.—The term "blocked asset" means—

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) or the United Nations Participation Act of 1945 (22 U.S.C. 287 *et seq.*); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

(3) CERTAIN PROPERTY.—The term "property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" and the term "asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

(4) TERRORIST PARTY.—The term "terrorist party" means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

5. The Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899, provides in relevant part as follows:

The United States of America and Iran, desirous of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples, and of regulating consular relations, have resolved to conclude, on the basis of reciprocal equality of treatment, a Treaty of Amity, Economic Relations, and Consular Rights, and have appointed as their Plenipotentiaries:

The President of the United States of America:

Mr. Selden Chapin, Ambassador Extraordinary and Plenipotentiary of the United States of America at Tehran;

and

His Imperial Majesty, the Shah of Iran:

His Excellency Mr. Mostafa Samiy, Under Secretary of the Ministry of Foreign Affairs;

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

* * * * *

ARTICLE III

1. Companies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in

the activities for which they are organized. As used in the present Treaty, "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.

2. Nationals and companies of either High Contracting Party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms no less favorable than those applicable to nationals and companies of such other High Contracting Party or of any third country. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registration or domestication.

3. The private settlement of disputes of a civil nature, involving nationals and companies of either High Contracting Party, shall not be discouraged within the territories of the other High Contracting Party; and, in cases of such settlement by arbitration, neither the alienage of the arbitrators nor the foreign situs of the arbitration proceedings shall of themselves be a bar to the enforceability of awards duly resulting therefrom.

ARTICLE IV

1. Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded ef-

fective means of enforcement, in conformity with the applicable laws.

2. Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

3. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either High Contracting Party located within the territories of the other High Contracting Party shall not be subject to entry or molestation without just cause. Official searches and examinations of such premises and their contents, shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

4. Enterprises which nationals and companies of either High Contracting Party are permitted to establish or acquire, within the territories of the other High Contracting Party, shall be permitted freely to conduct their activities therein, upon terms no less favorable than other enterprises of whatever nationality engaged in similar activities. Such nationals and companies shall enjoy the right to continued control and management of such enterprises; to engage attorneys, agents, accountants and other technical experts, executive personnel, interpreters and other specialized employees of their choice; and to do

all other things necessary or incidental to the effective conduct of their affairs.

Article V

1. Nationals and companies of either High Contracting Party shall be permitted, within the territories of the other High Contracting Party: (a) to lease, for suitable periods of time, real property needed for their residence or for the conduct of activities pursuant to the present Treaty; (b) to purchase or otherwise acquire personal property of all kinds; and (c) to dispose of property of all kinds by sale, testament or otherwise. The treatment accorded in these respects shall in no event be less favorable than that accorded nationals and companies of any third country.

* * * * *

Article XXI

1. Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other High Contracting Party may make with respect to any matter affecting the operation of the present Treaty.

2. Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.

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6. Article 8 of the Uniform Commercial Code provides in relevant part as follows:

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§ 8-102. Definitions.

(a) In this Article:

* * * * *

(14) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

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(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

* * * * *

§ 8-112. Creditor's Legal Process.

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d).

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d).

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

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[OFFICIAL COMMENT]

3. Subsection (c) provides that a security entitlement can be reached only by legal process upon the debtor's security intermediary. Process is effective only if directed to the debtor's own security intermediary. If Debtor holds securities through Broker, and Broker in turn holds through Clearing Corporation, Debtor's property interest is a security entitlement against Broker. Accordingly, Debtor's creditor cannot reach Debtor's interest by legal process directed to the Clearing Corporation. See also Section 8-115.

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§ 8-504. Duty of Securities Intermediary to Maintain Financial Asset.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a).

(c) A securities intermediary satisfies the duty in subsection (a) if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

§ 8-505. Duty of Securities Intermediary With Respect to Payments and Distributions.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

§ 8-506. Duty of Securities Intermediary to Exercise Rights as Directed by Entitlement Holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§ 8-507. Duty of Securities Intermediary to Comply With Entitlement Order.

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

§ 8-508. Duty of Securities Intermediary to Change Entitlement Holder's Position to Other Form of Security Holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with rea-

sonable commercial standards to follow the direction of the entitlement holder.

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